



CITY OF PUNTA GORDA

PROCUREMENT DIVISION

PROCUREMENT POLICY

June 20, 2001

MISSION STATEMENT FOR THE PROCUREMENT DIVISION

Promote and maintain high ethical values and purchasing practices that are in accordance with the State Statutes and City Ordinances, which include:

- *Acquisition of goods and services in an efficient and effective manner.*
- *Expending public dollars in a way that instills public trust in the City's Procurement System.*

Revised: July 6, 2005 – Section 1 (1.9)
September 20, 2005 – Section 1 (1.10) and Section 5 (5.27)
July 14, 2006 – Section 6
August 10, 2006 – Section 5 (5.1); Section 6A
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PROCUREMENT POLICY

1. GENERAL PROVISIONS

1.1 PURPOSES AND INTENT

- 1.1.1 PURPOSES AND POLICIES. The underlying purpose of this Policy is to provide the City of Punta Gorda ("City") a unified procurement system, with centralized responsibility. This Policy clarifies and modernizes the rules and regulations governing procurement by the City while allowing the continued development of procurement policies and practices. This Policy provides for increased economy in procurement activities and enables the City to maximize, to the fullest extent practicable, the purchasing value of public funds. This is accomplished by fostering effective broad-based competition while promoting fair and equitable treatment of all persons who participate in the City procurement process. This Policy provides safeguards for the maintenance of a procurement system of quality and integrity and is intended to provide for increased public confidence in the procedures followed by the City in public procurement.
- 1.1.2 USE. This Policy shall be used by the City's administrative staff. Failure to follow the guidelines stated in this Policy may be grounds for administrative discipline, up to and including termination. This Policy creates no rights for or in any third party, to any particular application or interpretation of this Policy or in any contract, bid, proposal, invitation for bids, or request for proposals of the City.
- 1.1.3 CHANGES TO POLICY. If, after acceptance of this policy, an item is discovered and requires implementation, it may be amended by the City Manager, unless the change effects the intent of the policy, in which case, it will be brought back to City Council. Any amendment(s) must be approved by the City Manager.

1.2 REQUIREMENT OF GOOD FAITH

This Policy requires all parties involved in the negotiation, performance, or administration of City contracts to act in good faith.



1.3 APPLICATION OF THIS POLICY

1.3.1 APPLICATION TO CITY PROCUREMENT. This Policy shall apply to all expenditures of City funds regardless of their source, including federal assistance monies, except for funds expended for personal services and except as specified in Section 17 — Exceptions/Exemptions. It shall also apply to the disposal of City surplus and obsolete property. Nothing in this Policy shall prevent the City from complying with the terms and conditions of any grant, bequest, or cooperative agreement. In case of conflict between this policy and the terms and conditions of any grant, bequest, or cooperative agreement, the terms of the grant, bequest, or cooperative agreement shall govern.

1.4 EFFECTIVE DATE

This Policy shall become effective upon acceptance by the City Council.

1.5 WRITTEN REQUESTS

1.5.1 WRITTEN REQUEST. A written request is defined as a purchase requisition or memorandum addressed to Procurement requesting a commodity or service to be procured.

1.5.2 CONTENT. Each written request, made by the requesting department, shall set out sufficient facts, circumstances, and reasoning as well as substantiate the specific determination that is made. A written request may be in the form of a requisition or memorandum.

1.5.3 OBTAINING SUPPORTING INFORMATION. While the Procurement Manager is responsible for the execution of the written request, other City personnel, particularly technical personnel and appropriate personnel in the User Department, are responsible for furnishing to the Procurement Manager, in an accurate and adequate fashion, the information pertinent to the request. When requested, such information shall be furnished in writing to the Procurement Manager who shall have the authority to decide the final form and content of the request and to resolve any questions or conflicts arising with respect thereto.

1.5.4 FORMS. The Procurement Manager is authorized to prescribe methods and operational procedures to be used in preparing written requests.

1.5.5 RETENTION. Each written request shall be filed in the solicitation or contract file to which it applies; shall be retained as part of such file for so long as the file is required to be maintained; and, except as otherwise provided by law or regulation, shall be open to public inspection.



1.6 DEFINITIONS

The words defined in this Section shall have the meanings set forth below whenever they appear in this Policy, unless: (a) the context in which they are used clearly requires a different meaning; or (b) a different definition is prescribed for a particular "Part" or provision.

- 1.6.1 ADDENDA — written or graphic instruments issued prior to the opening of bids which clarify, correct or change the bidding documents or the contract documents.
- 1.6.2 AMENDMENT — method of changing the terms and conditions or requirements of a contract beyond what is specifically allowed by the contract.
- 1.6.3 AWARD — the acceptance of a bid, offer, or proposal by the proper authority.
- 1.6.4 BIDDER — a person who submits a response to an invitation for bids.
- 1.6.5 BRAND NAMES OR EQUAL SPECIFICATIONS — specifications limited to one or more items by manufacturers' names or catalog numbers to describe the standard of quality, performance or other salient characteristics needed to meet the City's requirements and which provides for the submission of equivalent products.
- 1.6.6 BRAND NAME SPECIFICATION — a specification limited to one (1) or more items by manufacturers' names or catalogs.
- 1.6.7 CHANGE ORDER — written order issued on or after the effective date of the agreement to correct errors, omissions, or discrepancies in purchase orders to cover acceptable overruns and freight costs, incorporate requirements to expand or reduce the scope of commodities or services ordered, or to meet unforeseen field, regulatory or market conditions; or a written order authorized by the proper authority, authorizing additions, deletions or revisions in the work or an adjustment on the contract price at times in accordance with the change order clause of a construction contract and signed by City and Contractor.
- 1.6.8 CHARTER — the charter of the City of Punta Gorda as amended from time-to-time.
- 1.6.9 CITY — shall mean the City of Punta Gorda, Florida
- 1.6.10 COMMODITIES — all personal property, including but not limited to supplies, goods, equipment, materials and printing, which are purchased, leased or otherwise contracted for by the City.



- 1.6.11 COMPETITIVE SEALED BID OR COMPETITIVE SEALED PROPOSAL — the receipt of bids or offers submitted by responsive, responsible and qualified bidders or offerors.
- 1.6.12 CONSTRUCTION — the process of building, altering, restoring or repairing, improving or demolishing any public structure or building or other public improvements of any kind to any public real property. It does not include the routine operation, routine repair or routine maintenance of existing structures, buildings or real property.
- 1.6.13 CONSULTANT'S COMPETITIVE NEGOTIATIONS ACT (CCNA) — the common name for Section 287.055 of the Florida State Statutes concerning the procurement of architectural, engineering (including testing), landscape architecture, and registered land surveying services.
- 1.6.14 CONTRACT — a written binding agreement, including purchase orders, by the City of Punta Gorda, regardless of what it may be called, for the procurement of land, commodities or contractual services.
- 1.6.15 CONTRACTOR — any person having a contract with the City of Punta Gorda to perform a service or sell or lease land or a commodity.
- 1.6.16 CONTRACTUAL SERVICES — the rendering by a contractor of its time and effort rather than the furnishing of specific commodities, supplies, materials, goods, equipment and other personal property. The term applies only to those services rendered by individuals and firms who are independent contractors.
- 1.6.17 COOPERATIVE PURCHASING - means a procurement activity, in which the City participates either as a lead or participating agency, to purchase commodities and services in cooperation with other governmental agencies.
- 1.6.18 DESIGNEE — a duly authorized representative of another person.
- 1.6.19 ESTABLISHED CATALOG PRICE — the price included in a catalog, price list, schedule, or other form that:
- 1.6.19.1 *is regularly maintained by a manufacturer or contractor; and*
 - 1.6.19.2 *is either published or otherwise available for inspection by customers; and*
 - 1.6.19.3 *states prices at which sales are currently or were last made to a significant number of any category of buyers or the general buying public for the commodities or services involved.*



- 1.6.20 EXTERNAL FUNDED PURCHASES - means any procurement activity that receives funding from federal, state, regional or other funding agencies.
- 1.6.21 FIRM FIXED-PRICE CONTRACT — a contract whereby the price is fixed, not variable, for the entire life of the contract or until a set quantity of commodities or services is delivered.
- 1.6.22 FORMAL BID PROCESS — the use of an invitation for bids or a request for proposals pursuant to this Policy.
- 1.6.23 FRANCHISE — a special right or privilege conferred by the City of Punta Gorda in accordance with the City's Charter.
- 1.6.24 GENERAL SERVICES — support services performed by an independent contractor requiring specialized knowledge, experience, or expertise. The service rendered does not consist primarily of acquisition of equipment or materials. Examples of general services are janitorial, pest control services, and maintenance of equipment.
- 1.6.25 GOVERNMENTAL AGENCY — any agency of the Federal, State or local government.
- 1.6.26 INVITATION FOR BIDS — a written solicitation for competitive sealed bids with the title, date and hour of the public bid opening designated and specifically defining the commodities and contractual services for which bids are sought.
- 1.6.27 LOCAL VENDOR - means any persons, firms, sole proprietorships, partnership, companies, or corporations, which has a physical address in within Charlotte County with a permanent office or other site where a local vendor conducts, engages in or carries on all or a portion of its business; has personnel, equipment and materials sufficient to constitute a present ability to perform the service and/or provide the commodities; and the vendor has a valid Business Tax Receipt issued by Charlotte County, a minimum of six (6) months prior to the release of the invitation to bid, that authorizes the business to provide the services or commodities within Charlotte County. Post Office Boxes are not verifiable and shall not be used for the purpose of establishing said physical address.
- 1.6.28 LOW BID - means a vendor who is qualified to perform the work and meets all conditions required under an invitation to bid or informal quote or formal quote and has been deemed responsive and responsible, and who submitted the lowest price in the solicitation activity, which shall also may or may not include additional the consideration for award as identified in the solicitation package.
- 1.6.29 MANDATORY BID AMOUNT — the dollar amount at which the Formal Bid Process is required unless an exemption is provided in this Policy. The



mandatory bid amount is Twenty–Five Thousand Dollars (\$25,000.00).

- 1.6.30 NON-LOCAL VENDOR - means any persons, firms, sole proprietorships, partnership, companies, or corporations, located outside of Charlotte County, Florida.
- 1.6.31 NOTICE OF AWARD — the written notice by the City to the apparent, successful bidder or offeror stating that upon compliance by the apparent successful bidder or offeror with the conditions precedent to the contract within the time specified, the City will sign and deliver the contract.
- 1.6.32 OBSOLETE PROPERTY — any personal property belonging to the City which may no longer be used for its intended purpose, which has completed its useful life cycle, or the use of which has become economically impracticable.
- 1.6.33 OFFEROR — a person who submits a proposal in response to a request for proposals.
- 1.6.34 OPEN-END CONTRACT — a contract whereby an indefinite quantity of commodities, services, or construction are to be procured over an identified time span, as and when needed.
- 1.6.35 PERSON — any natural person or any corporation, partnership, association of persons, and any other organization or entity capable of entering into a contract.
- 1.6.36 PIGGYBACK PURCHASING - means a procurement activity that allows the City to make purchases directly from state contracts, national contracts and government agencies when deemed to be in the best interest of the City.
- 1.6.37 PROCUREMENT
- 1.6.37.1 *Purchasing, renting, leasing, or otherwise acquiring any supplies, services, or construction; includes all functions that pertain to the acquisition, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.*
- 1.6.37.2 *The combined functions of purchasing, inventory control, traffic and transportation, receiving, receiving inspection, storekeeping, and salvage and disposal operations.*
- 1.6.38 PROCUREMENT MANAGER — the manager of the Procurement Division of the City of Punta Gorda, or his or her designee, who shall be the principal public purchasing official for the City and who is responsible, under the direction of the City Manager, for the procurement of commodities and contractual services as well as the management and disposal of commodities.



- 1.6.39 PROFESSIONAL SERVICES — advice, instruction, or specialized work from a person specifically qualified in a particular area. Professional services may include a report, or written advice. However, the main thrust of the service is not considered labor, but the exercise of intellectual ability.
- 1.6.40 PURCHASE ORDER — the City's document to formalize a purchase transaction with a contractor, conveying acceptance of a contractor's proposal, bid or quotation. The purchase order shall contain statements as to quantity, description, and price of the commodities, services, or construction ordered and applicable terms as to payment, discounts, date of performance, transportation, insurance and other factors or suitable references pertinent to the purchase and performance by the contractor.
- 1.6.41 QUALIFIED LOCAL BUSINESS - means a Charlotte county business, deemed a responsive and responsible bidder and satisfying the requirements under the invitation to bid and is considered for award to perform the services or commodities requested.
- 1.6.42 QUOTATION — an informal or formal notice by a contractor to the City stating the prices, terms and conditions under which the contractor will furnish certain commodities or services.
- 1.6.43 REQUEST FOR PROPOSALS — a solicitation for sealed proposals with the title, date and hour of the public opening designated. A request for proposals may be used when the City is incapable of specifically defining the scope of work for which the commodities or contractual service is required and when the City is requesting that a qualified offeror propose commodities or contractual services to meet the specifications of the solicitation document.
- 1.6.44 REQUEST FOR QUALIFICATION — a solicitation for sealed qualification with the title, date and hour of the public opening designated. A request for qualification may be used when the City is soliciting for services governed by CCNA procedures or should the City determine the need to pre-qualify contractors for services prior to obtaining pricing.
- 1.6.45 RESPONSIBLE BIDDER OR RESPONSIBLE OFFEROR — the bidder or offeror whose proposal the City determines to be responsive and whom the City determines to be responsible to complete the bid or offer, provided that the proposal is considered (within the sole discretion of the City) reasonable and in the best interest of the City to accept. The City reserves the right to reject any bid or offer by a bidder or offeror who has previously failed to perform properly or to complete on time, previous contracts with the City. Such a rejected bid or offer shall preclude the bidder or offeror from being considered a responsible bidder or offeror.
- 1.6.46 RESPONSIVE BID OR RESPONSIVE OFFER — a bid or proposal which conforms in all material respects to the invitation for bids or request for proposals. The person or company shall not be on the City's current debarred or suspension list.



- 1.6.47 SELECTION AND NEGOTIATION COMMITTEE — group of persons selected by the City Manager or the Procurement Manager to rank in preferential order those professional firms or individuals interested in providing services in accordance with CCNA procedures on a particular project and to negotiate a final contract with the highest ranked firm.
- 1.6.48 SPECIFICATIONS — any description of the physical or functional characteristics or of the nature of a service, commodity or construction item. It may include a description of any requirement for inspecting, testing or preparing a commodity, service or construction item for delivery. Specifications may also contain provisions for inclusion of factors which will lead to the ultimate calculation of lowest total cost.
- 1.6.49 SOLE SOURCE — the only known vendor or the only vendor reasonably capable of providing a service or commodity to the City.
- 1.6.50 SURPLUS PROPERTY — any personal property belonging to the City, which is capable of being used but is in excess of the normal operating requirements of the City as determined by the Procurement Manager.
- 1.6.51 USER DEPARTMENT — any department of the City that utilizes any commodities, services, or construction procured under this Policy.

1.7 PUBLIC ACCESS TO PROCUREMENT INFORMATION

Procurement information shall be a public record to the extent provided by law, including but not limited to Public Records Act, Florida Statutes, Chapter 119, and shall be available to the public as provided by law and applicable City ordinances and resolutions.

1.8 LAW AND GRANT REQUIREMENT

In any situation where compliance with this Policy will place the City in conflict with state or federal law or the terms of any grant, the City shall comply with such federal or state law, grant requirements, or authorized regulations to the extent they are either not reflected in this Policy or are contrary to provisions of this Policy.

1.9 OWNER DIRECT PURCHASE PROGRAM

- 1.9.1 The City has authorized by ordinance a tax savings program under Exemptions (Section 17(17.2), which will be referred to as the Owner Direct Purchase Program. This authorization will allow the City to include the Owner Direct Purchase Program, for large dollar materials and equipment purchases, in awarded agreements to suppliers and contractors. Inclusion of the Program in agreements shall be at the discretion of the Procurement Manager.

1.10 ETHICS



- 1.10.1 Responsibility to the City.
 - 1.9.1.1 *Follow the policy, procedures and ordinances of the City.*
 - 1.9.1.2 *Understand the authority granted by the City.*
 - 1.9.1.3 *Avoid activities, which would compromise or give the perception of compromising the best interest of the City.*
 - 1.9.1.4 *Reduce the potential for any charges of preferential treatment by actively promoting the concept of competition.*
 - 1.9.1.5 *Obtain the maximum benefit for funds spent as agents for the City.*
- 1.10.2 Conflict of Interest.
 - 1.10.2.1 *Avoid any private or professional activity that would create a conflict between your personal interest and the interests of the City.*
 - 1.10.2.2 *Avoid lending money to or borrowing money from any supplier.*
- 1.10.3 Perception
 - 1.10.3.1 *Avoid the appearance of unethical or compromising practices in relationships, actions and communications.*
 - 1.10.3.2 *Avoid business relationships with personal friends. Request a reassignment if the situation arises.*
 - 1.10.3.3 *Avoid noticeable displays of affection, which may give an impression of impropriety.*
 - 1.10.3.4 *Avoid holding business meetings with suppliers outside the office. When such meetings do occur, the meeting location should be carefully chosen so as not to be perceived as inappropriate by other persons in the business community or your peers.*
- 1.10.4 Gratuities.
 - 1.10.4.1 *Never solicit or accept money, loans, credits or prejudicial discounts, gifts, entertainment, favors or services from present or potential suppliers, which might influence or appear to influence purchasing decisions.*
 - 1.10.4.2 *Never solicit gratuities in any form for yourself or the City.*
 - 1.10.4.3 *Promotional items and samples of nominal value, less than*



\$10.00, offered by suppliers for public relations purposes or distributed at professional/business organizational functions are acceptable.

1.10.4.4 *Gifts offered exceeding nominal value should be returned with an explanation or if perishable either returned or donated to a charity in the name of the supplier.*

1.10.4.5 *In the case of any gift, care should be taken to evaluate the intent and perception of acceptance to ensure that it is legal, that it will not influence your buying decisions, and that it will not be perceived by your peers and others as unethical.*

1.10.5 Business Meals

1.10.5.1 *There are times when during the course of business it may be appropriate to conduct business during meals, in such instances, the meal should be for a specific business purpose.*

1.10.5.2 *Avoid frequent meals with the same supplier. The employee shall pay for their own meals.*

1.10.5.3 *Employees may accept meals donated through professional/business organization meetings or Supplier conducted seminars.*

1.10.6 Relationship with Suppliers

1.10.6.1 *Maintain and practice, to the highest degree possible, business ethics, professional courtesy, and competence in all transactions.*

1.10.6.2 *Association with Suppliers at lunches, dinners or professional/business organization meetings is an acceptable professional practice enabling the buyer to establish better business relations provided that the employee keeps free of obligation to the Supplier.*

1.10.6.3 *Purchase without prejudice, striving to obtain the maximum value for each dollar of expenditure.*

1.10.6.4 *Preclude from showing favoritism or be influenced by Suppliers through the acceptance of gifts, gratuities, loans or favors.*

1.10.6.5 *Adhere to and protect the supplier's business and legal rights to confidentiality for trade secrets, and other proprietary information.*

1.10.6.6 *Refrain from publicly endorsing products.*



1.10.7 Relationship with the City

- 1.10.7.1 *Remain free of any and all interests and activities, which are or could be detrimental or in conflict with the best interests of the City.*
- 1.10.7.2 *Refrain from engaging in activities where the employee has a significant personal or indirect financial interest.*
- 1.10.7.3 *Exercise discretionary authority on behalf of the City.*
- 1.10.7.4 *Avoid acquiring interest or incurring obligations that could conflict with the interests of the City.*

1.10.8 Relationships with other Agencies and Organizations

- 1.10.8.1 *An employee shall not utilize their position to exert leverage on individuals or firms for the purpose of creating a benefit for agencies or organizations that they may represent.*
- 1.10.8.2 *All involvement and transactions shall be handled in a professional manner with the City's interests taking precedence.*



2. COMPETITIVE PROCUREMENT - GENERAL PROVISIONS

2.1 EXTENSION OF TIME FOR BID OR PROPOSAL ACCEPTANCE

After opening bids or proposals, the Procurement Manager may request bidders or offerors to extend the time during which the City may accept their bids or proposals. With regard to bids, no other change is permitted. The reasons for requesting such extension shall be documented.

2.2 ONLY ONE BID OR PROPOSAL RECEIVED

2.2.1 ONE BID RECEIVED. If only one (1) responsive bid is received in response to an invitation for bids, an award may be made to the single bidder if the Procurement Manager finds that the price submitted is fair and reasonable and that other prospective bidders had reasonable opportunity to respond or there is not adequate time for re-solicitation; or the Procurement Manager may negotiate with the single bidder a fair and reasonable price lower than the price bid. Otherwise, the bid may be rejected pursuant to the provisions of Section 12 — Cancellation of Solicitations; Rejection of Bids or Proposals, and:

2.2.1.1 *new bids may be solicited; or*

2.2.1.2 *the proposed procurement may be canceled;*

2.2.2 ONE PROPOSAL RECEIVED. If only one (1) responsive proposal is received in response to a request for proposals, the Procurement Manager may either recommend award in accordance with the procedures set forth in Section 2.2.1 - One Bid Received or, if time permits, re-solicit for the purpose of obtaining competitive sealed proposals.



3. SPECIFICATIONS

3.1 DUTIES OF THE PROCUREMENT MANAGER

The Procurement Manager shall promulgate regulations governing the preparation, maintenance, and content of specifications for commodities, services, and construction required by the City, under the direction of the City Manager.

3.2 GENERAL PURPOSE AND POLICIES

3.2.1 PURPOSE. The purpose of a specification is to serve as a basis for obtaining a commodity, service, or construction item adequate and suitable for the City's needs in a cost-effective manner, taking into account, to the extent practicable, the costs of ownership and operations as well as initial acquisition costs. It is the policy of the City that specifications permit maximum practicable competition consistent with this purpose. Specifications shall be drafted with the objective of clearly describing the City's requirements.

3.2.2 USE OF FUNCTIONAL OR PERFORMANCE DESCRIPTIONS. Specifications shall, to the extent practicable, emphasize functional or performance criteria while limiting design or other detailed physical descriptions to those necessary to meet the needs of the City. To facilitate the use of such criteria, User Departments shall endeavor to include as a part of their purchase requisitions the principal functional or performance needs to be met. It is recognized, however, that the preference for use of functional or performance specifications is primarily applicable to the procurement of commodities and services. Such preference is often not practicable in construction, apart from the procurement of supply type items for a construction project.

3.2.3 PREFERENCE FOR COMMERCIALLY AVAILABLE PRODUCTS. It is the general policy of this City to procure standard commercial products whenever practicable. In developing specifications, accepted commercial standards shall be used and unique requirements shall be avoided, to the extent practicable.

3.3 PROCEDURES FOR THE DEVELOPMENT OF SPECIFICATIONS

3.3.1 PROVISIONS OF GENERAL APPLICATION.

3.3.1.1 ***Specifications of Alternatives may be included.*** A specification may provide alternate descriptions of commodities, services, or construction items where two (2) or more design, functional, or performance criteria will satisfactorily meet the City requirements.



3.3.1.2 **Contractual Terms not to be Included.** *To the extent feasible, a specification shall not include any solicitation or contract term or condition such as a requirement for time or place of bid opening, time of delivery, payment, liquidated damages, or qualification of bidders.*

3.3.1.3 **Use of Existing Specifications.** *If a specification for a common or general use item had been developed or a qualified products list has been developed for a particular supply, service, or construction item, it shall be used unless the Procurement Manager makes a determination that its use is not in the City's best interest and that another specification shall be used.*

3.3.2 SPECIFICATIONS FOR COMMON OR GENERAL USE ITEMS.

3.3.2.1 **Preparation and Utilization.** *A specification for a common or general use item shall, to the extent practicable, be used when:*

3.3.2.1.1 a commodity, service, or construction item is used in common by several User Departments or used repeatedly by one (1) User Department, and the characteristics of the commodity, service, or construction item as commercially produced or provided, remain relatively stable while the frequency or volume of procurements is significant; or

3.3.2.1.2 the City's recurring needs require uniquely designed or specially produced items.

3.3.2.2 **Final Approval.** *Final approval of a proposed specification for a common or general use item shall be given by the Procurement Manager.*

3.3.2.3 **Revisions.** *Revisions to specifications for common or general use items which do not change the technical elements or the specifications but which are necessary for clarification may be made upon approval of the Procurement Manager or User Department.*

3.3.3 BRAND NAME OR EQUAL SPECIFICATION.

3.3.3.1 **Use.** *Brand name or equal specifications may be used when the Procurement Manager determines that:*

3.3.3.1.1 no specification for a common or general use item or qualified products list is available;

3.3.3.1.2 time does not permit the preparation of another form of specification, not including a brand name specification;

3.3.3.1.3 the nature of the product or the nature of the City's requirements makes use of a brand name or equal



specification suitable for the procurement; or

3.3.3.1.4 use of a brand name or equal specification is in the City's best interest;

3.3.3.2 **Designation of Several Brand Names.** *Brand name or equal specifications shall seek to designate as many different brands as practicable as "or equal" references and shall further state that substantially equivalent products to those designated will be considered for award.*

3.3.3.3 **Required Characteristics.** *Unless the Procurement Manager determines that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specifications shall include a description of the particular design, functional, or performance characteristics which are required.*

3.3.3.4 **Nonrestrictive Use of Brand Name or Equal Specifications.** *Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.*

3.3.4 BRAND NAME SPECIFICATION.

3.3.4.1 **Use.** *Since use of a brand name specification is restrictive, it should be used only when a determination is made that only the identified brand name item or items will satisfy the City's needs.*

3.3.4.2 **Competition.** *The Procurement Manager shall seek to identify sources from which the designated brand name item or items can be obtained and shall solicit such sources to achieve whatever degree of competition is practicable.*

3.3.4.3 **Justification.** *In the event the Department requests brand name specifications, they will need to provide a written justification to Procurement of the reasons why they must have this brand name. Failure to satisfactorily justify their reason may be cause to specify an equal product.*



3.3.5 QUALIFIED PRODUCTS LIST.

3.3.5.1 **Use.** *A qualified products list may be developed with the approval of the Procurement Manager when testing or examination of the commodities or construction items prior to issuance of the solicitation is desirable or necessary in order to best satisfy City requirements.*

3.3.5.2 **Solicitation.** *When developing a qualified products list, a representative group of potential commodities shall be solicited to submit products for testing and examination to determine acceptability for inclusion on a qualified products list. Any potential supplier, even though not solicited, may offer its products for consideration.*

3.3.5.3 **Testing and Confidential Data.** *Inclusion on a qualified products list shall be based on results of test or examinations conducted in accordance with prior published requirements. Except as otherwise provided by law, trade secrets, test data, and similar information provided by the supplier will be kept confidential when requested in writing by the supplier. However, qualified products lists test results shall be made public but in a manner so as to protect the confidentiality of the identity of the competitors by, for example, using numerical designations.*

3.4 **MAXIMUM PRACTICABLE COMPETITION**

All specifications should seek to promote overall economy for the purposes intended and encourage competition in satisfying the City's needs, and should not be unduly restrictive.

3.5 **NON-RESTRICTIVENESS REQUIREMENT**

All specifications should be written in such a manner as to describe the requirements to be met, without having the effect of exclusively requiring a proprietary supply, service, or construction item, or procurement from a sole source, unless no other manner of description will suffice.

3.6 **SPECIFICATIONS PREPARED BY OTHER THAN CITY PERSONNEL**

The requirements of this Section shall apply to all specifications prepared by other than City personnel, including, but not limited to, those prepared by consultants, architects, engineers, designers, and other draftsmen of specifications for public contracts. Contracts for the preparation of specifications by other than City personnel shall require the specification writer to adhere to such requirements.



4. TYPES OF CONTRACTS

4.1 GENERALLY

Subject to the limitations of this Section, any type of commercially reasonable contract which will promote the best interest of the City may be used; provided that the use of a cost plus a percentage of cost contract is prohibited. A cost reimbursement contract may be used only when a determination is made in writing that such contract is likely to be less costly to the City than any other type or that it is impractical to obtain the commodities, services, or construction except under such a contract.

4.2 FIXED-PRICE CONTRACTS

4.2.1 GENERAL. A fixed-price contract places responsibility on the contractor for the delivery of the product or the complete performance of the services or construction in accordance with the contract terms at a price that may be firm or may be subject to contractually-specified adjustments. The fixed-price contract is appropriate for use when the extent and type of work necessary to meet City requirements can be reasonably specified and the cost can be reasonably estimated, as is generally the case for construction or standard commercial products. A fixed-price type of contract is the only type of contract that can be used in competitive sealed bidding.

4.2.2 FIRM FIXED-PRICE CONTRACT. A firm fixed-price contract provides a price that is not subject to adjustment because of variations in the contractor's cost of performing the work specified in the contract. It should be used whenever prices, which are fair and reasonable to the City, can be established at the outset. Basis to be established may include:

4.2.2.1 *adequate price competition for the contract; or*

4.2.2.2 *comparison of prices in similar prior procurements in which prices were fair and reasonable; or*

4.2.2.3 *establishment of realistic costs of performance by utilizing available cost or pricing data and identifying uncertainties in contract performance; or*

4.2.2.4 *use of other adequate means to establish a firm price.*

4.2.3 FIXED PRICE CONTRACT WITH PRICE ADJUSTMENT. A fixed-price contract with price adjustment provides for variation in the contract price under special conditions defined in the contract, other than customary provisions authorizing price adjustments due to modifications to the work. The formula or other basis by which the adjustment in contract price can be made shall be specified in the solicitation and the resulting contract.



Adjustment allowed may be upward or downward only or both upward and downward. Examples of conditions under which adjustments may be provided in fixed-price contracts are:

4.2.3.1 *changes in the contractor's labor agreement rates as applied to industry or area wide; or*

4.2.3.2 *changes due to rapid and substantial price fluctuations, which can be related to an accepted index (such as contracts for gasoline, heating oils, etc.); and*

4.2.4 If the contract permits unilateral action by the contractor to bring about the condition under which a price increase may occur, the contract shall reserve to the City the right to reject the price increase and terminate without cost the future performance of the contract. The contract shall also require that notice of any such price increase shall be given within such time prior to its effective date as is specified in the contract. These restrictions shall not apply to fixed-price performance incentive contracts.

4.3 **TIME AND MATERIALS CONTRACTS AND LABOR HOUR CONTRACTS**

4.3.1 TIME AND MATERIALS CONTRACTS. Time and materials contracts provide an agreed basis for payment for materials supplied and labor performed. Such contracts shall, to the extent possible, contain a stated ceiling or an estimate that shall not be exceeded without prior City approval.

4.3.2 LABOR HOUR CONTRACTS. A labor hour contract provides only for the payment of labor performed.

4.4 **DEFINITE QUANTITY AND INDEFINITE QUANTITY CONTRACTS**

4.4.1 DEFINITE QUANTITY. A definite quantity contract is a fixed-price contract that provides for delivery of a specified quantity of commodities or services either at specified times or when ordered.

4.4.2 INDEFINITE QUANTITY. An indefinite quantity contract is a contract for an indefinite amount of commodities or services to be furnished at specified times, or as ordered, that establishes fixed unit prices. Generally an approximate quantity or the best information available as to quantity is stated in the solicitation. The contract may provide a minimum quantity the City is obligated to order and may also provide for a maximum quantity provision that limits the City's obligation to order.

4.4.3 REQUIREMENTS CONTRACTS. A requirements contract is an indefinite quantity contract for commodities or services that obligates the City to order all the actual requirements of designated User Department or Departments



during a specified period of time. The obligations to order the City's actual requirements are limited by the provisions of Florida Statute 672.306. For the protection of the City and the contractor, requirements contracts may include the following:

4.4.3.1 *a provision which requires the City or any User Departments named in the solicitation to order their actual requirement of the commodities or services covered. However, the City may reserve in the solicitation and in the resulting contract the right to take bids separately if a particular quantity requirement arises which exceeds the City's normal requirements or an amount specified in the contract;*

4.4.3.2 *exemptions from ordering under the contract when;*

4.4.3.2.1 the Procurement Manager approves a finding that the supply or service available under the contract will not meet a non-recurring, special need of the City; or

4.4.3.2.2 commodities are produced or services are performed incidental to the City's own programs, such as industries of correctional institutions, that can satisfy the need.

4.4.3.3 *Adjustments may be allowed when:*

4.4.3.3.1 when a general price change applicable to all customers occurs; or

4.4.3.3.2 when a general price change alters the base price (such as a change in a manufacturer's published price list or posted price list or posted price to which a fixed discount is applied pursuant to the contract to determine the contract price).

4.5 LEASES

4.5.1 DESCRIPTION. A lease is a contract for the use of equipment or other commodities or real property under which title will not pass to the City at any time. When deemed necessary, the Procurement Manager, City Manager and/or City Attorney will be required to authorize a lease.

4.5.2 USE. A lease may be entered into provided:

4.5.2.1 *it is in the best interest of the City; and*

4.5.2.2 *all conditions for renewal and termination are set forth in the lease; and*

4.5.2.3 *the lease is not used to circumvent normal procurement procedures.*



4.6 OPTION PROVISIONS

- 4.6.1 CONTRACT PROVISION. When a contract is to contain an option for renewal, extension, or purchase, notice of such provision shall be included in the solicitation. Exercise of the option is always at the City's discretion only, and not subject to agreement or acceptance by the contractor.
- 4.6.2 EXERCISE OF OPTION. Before exercising any option for renewal, extension, or purchase, the Procurement Manager should attempt to ascertain whether a competitive procurement is practical, in terms of pertinent competitive and cost factors, and would be more advantageous to the City than renewal or extension of the existing contract.
- 4.6.3 LEASE WITH PURCHASE OPTION. A purchase option in a lease may be exercised only if the lease containing the purchase option was awarded under competitive sealed bidding or competitive sealed proposals, or the leased supply or facility is the only supply or facility that can meet the City's requirements, as determined in writing by the Procurement Manager. Before exercising such an option the Procurement Manager shall:
- 4.6.3.1 *investigate alternative means of procuring comparable commodities or facilities; and*
 - 4.6.3.2 *compare estimated costs and benefits associated with the alternative means and the exercise of such option. For example, the benefit of buying new state-of-the-art equipment compared to the estimated initial savings associated with exercise of a purchase option.*

4.7 MULTI-TERM CONTRACTS - GENERAL

- 4.7.1 GENERAL. A multi-term contract is appropriate when it is in the best interest of the City to obtain uninterrupted services extending over more than one (1) fiscal period where the performance of such services involves high start-up costs during a transition period. The multi-term method of contracting is also appropriate when special production of definite quantities of commodities for more than one (1) fiscal period is necessary to best meet the City's needs but funds are available only for the initial fiscal period. Special production refers to production for contract performance which requires alteration in the contractor's facilities or operations involving high start-up costs. The contractual obligation of the City in each fiscal period succeeding the first is subject to the appropriation and availability of funds thereof. The contract shall provide that, in the event that funds are not available for any succeeding fiscal period, the remainder of such contract shall be canceled and the contractor shall not be reimbursed the value of any non-recurring costs incurred but not amortized in the price of the commodities delivered or services performed under the contract.



- 4.7.2 **OBJECTIVE.** The objective of the multi-term contract is to promote economy and efficiency in procurement by obtaining the benefits of sustained volume production and consequent low prices, and by increasing competitive participation in procurements which involve special production with consequent high start-up costs and in the procurement of services which involve high start-up costs or high phase-in/phase-out costs during changeover of service contractors.

4.8 CONDITIONS FOR USE OF MULTI-TERM CONTRACTS

- 4.8.1 **WHEN USED.** A multi-term contract may be used when it is determined by the Procurement Manager that:

4.8.1.1 *special production of definite quantities or the furnishing of long-term services are required to meet City needs; and*

4.8.1.2 *a multi-term contract will serve the best interest of the City by encouraging effective competition or otherwise promoting economies in City procurement. The following factors are among those relevant to such a determination:*

4.8.1.2.1 firms which are not willing or able to compete because of high start-up costs or capital investment in facility expansion will be encouraged to participate in the competition when they are assured of recouping such costs during the period of contract performance; and

4.8.1.2.2 lower production costs because of larger quantity or service requirements, and substantial continuity of production or performance over a longer period of time can be expected to result in lower unit prices; and

4.8.1.2.3 stabilization of the contractor's work force over a longer period of time may promote economy and consistent quality; and

4.8.1.2.4 the cost and burden of contract solicitation, award, and administration of the procurement may be reduced.

- 4.8.2 **CANCELLATION DUE TO UNAVAILABILITY OF FUNDS IN SUCCEEDING FISCAL PERIODS.** When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be canceled and the contractor shall not be reimbursed for the value of any non-recurring costs incurred but not amortized in the price of the commodities or services delivered under the contract.



4.9 MULTI-TERM CONTRACT PROCEDURE

4.9.1 SOLICITATION. The solicitation shall state:

4.9.1.1 *the amount of commodities or services required for the proposed contract period; and*

4.9.1.2 *that a unit price shall be given for each supply or service, and that such unit prices shall be the same throughout the contract (except to the extent price adjustments may be provided in the solicitation and resulting contract); and*

4.9.1.3 *the Procurement Manager will notify the contractor on a timely basis that the funds are, or are not, available for the continuation of the contract for each succeeding fiscal period; and*

4.9.1.4 *whether bidders or offerors may submit prices for:*

4.9.1.4.1 the first fiscal period only; or

4.9.1.4.2 the entire time of performance only; or

4.9.1.4.3 both the first fiscal period and the entire time of performance.

4.9.1.5 *that a multi-term contract may be awarded and how award will be determined including, if prices for the first fiscal period and entire time of performance are submitted, how such prices will be compared.*

4.9.2 AWARD. Award shall be made as stated in the solicitation and permitted under the source selection method utilized. Care should be taken when evaluating multi-term prices against prices for the first fiscal period that award on the basis of prices for the first period does not permit the successful bidder or offeror to "buy in", that is, give such bidder or offeror an undue competitive advantage in subsequent procurements.

4.10 MISCELLANEOUS CONTRACT TYPES

The following types of contracts may also be utilized by the Procurement Manager when appropriate:

4.10.1 COOPERATIVE PURCHASES. Cooperative purchasing means a procurement conducted by or on behalf of more than one governmental entity. These include GSA contracts, which are contracts entered into by the General Services Administration of the Federal Government (also known as GSA Schedules) and are multiple-award contracts containing prices to be utilized by all Federal Government Agencies. GSA contracts also contain the



most preferred customer clause, making the prices contained in the GSA contracts equivalent with those that are given to the most preferred customer of the vendor. Other cooperative purchases include, but are not limited to, Florida State Contracts, piggy backing other governmental entities contracts, local cooperative purchasing groups, and State Negotiated Agreement Pricing. The City may purchase under cooperative purchase contracts when they are obtained using competitive bidding procedures equivalent to those contained in this Policy.

- 4.10.2 DISCOUNT-FROM-LIST. Discount-from-list contracts refers to those contracts whereby price is determined by applying a percentage discount from an established catalog price. These may be utilized when included in a bid by the lowest responsive and responsible bidder.
- 4.10.3 OPEN-END PURCHASE ORDERS. Open-end purchase order means a purchase order whereby a contractor provides commodities, services, or construction on demand or on a prescribed schedule not to exceed a period of twelve (12) months or the Mandatory Bid Amount. An open-end purchase order may be used as a release and encumbrance document to authorize an agency to order any predetermined amount from an open-end contract on an as-needed basis.

4.11 MULTIPLE SOURCE CONTRACTING

- 4.11.1 GENERAL. A multiple award is an award of an indefinite quantity contract for one or more similar commodities or services to more than one (1) bidder or offeror.
- 4.11.2 LIMITATIONS ON USE. A multiple award may be made when the award to two (2) or more bidders or offerors for similar products is necessary for adequate delivery, service, or product compatibility. Multiple awards should not be made when a single award will meet the City's needs without sacrifice of economy or service. Awards shall not be made for the purpose of dividing the business, making available product or supplier selection to allow for user preference unrelated to utility or economy, or avoiding the resolution of tie bids. Any such awards shall be limited to the least number of suppliers necessary to meet the valid requirements of the City.
- 4.11.3 CONTRACT AND SOLICITATION PROVISIONS. All eligible User Departments shall be named in the solicitation, and the actual requirements of such users that can be met under the contract shall be obtained in accordance with the contract, provided that:
 - 4.11.3.1 *the City shall reserve the right to take bids separately if a particular quantity requirement arises which exceeds its normal requirement or an amount specified in the contract; and*
 - 4.11.3.2 *the City shall reserve the right to take bids separately if the Procurement Manager approves a finding that the supply or*



service available under the contract will not meet a non-recurring special need of the City.

- 4.11.4 INTENT TO USE. If a multiple award is anticipated prior to issuing a solicitation, the City shall reserve the right to make such an award and the criteria for award shall be stated in the solicitation.



5. COMPETITIVE SEALED BIDDING

5.1 USE OF COMPETITIVE SEALED BIDDING

5.1.1 CONDITIONS FOR USE. Contracts shall be awarded by competitive sealed bidding except as otherwise provided in:

5.1.1.1 *Section 6 — Competitive Sealed Proposals*

5.1.1.2 *Section 6 A – Invitation to Negotiate*

5.1.1.3 *Section 8 – Request for Qualification*

5.1.1.4 *Section 9 — Small Purchases*

5.1.1.5 *Section 15 — Sole Source Procurement*

5.1.1.6 *Section 16 — Emergency Procurement*

5.1.1.7 *Section 17 — Exceptions/Exemptions*

5.2 INVITATION TO BID

5.2.1 The invitation for bids is used to initiate a competitive sealed bid procurement.

5.2.2 An invitation for bids shall be issued and shall include a purchase description and contractual terms and conditions applicable to the procurement. The invitation for bids shall also include the following:

5.2.2.1 *Instruction and information to bidders concerning the bid submission requirements, including the time and date set for receipt of bids, the address of the office to which bids are to be delivered, the maximum time for bid acceptance by the City and any other pertinent information;*

5.2.2.2 *Delivery or performance schedule and inspection and acceptance requirements that are not included in the purchase description; and*

5.2.2.3 *Warranty and bonding or other security requirements, as applicable.*

5.2.3 INCORPORATION BY REFERENCE. The invitation for bids may incorporate documents by reference provided that the invitation for bids specifies where such documents can be obtained

5.2.4 ACKNOWLEDGEMENT OF ADDENDA. The invitation for bids shall require



the acknowledgment of the receipt of all addenda issued.

- 5.2.5 **BIDDING TIME.** Bidding time is the period of time between the date of distribution of the invitation for bids and the time and date set for receipt of bids. In each case, bidding time will be set to provide bidders a reasonable time to prepare their bids. A minimum of fourteen (14) calendar days shall be provided (unless a shorter time is deemed necessary for a particular procurement by the Procurement Manager).
- 5.2.6 **BIDDER SUBMISSIONS.** Bids and proposals shall be submitted in a sealed envelope which shall be clearly identified as a bid or proposal on the exterior of the envelope and delivered to the Office of the City Clerk. The invitation for bids shall provide a space in which the bid price shall be inserted and which the bidder shall sign and submit along with all other necessary submissions.
- 5.2.7 **PUBLIC NOTICE.** Public notice of the invitation for bids shall be given not less than fourteen (14) calendar days prior to the date and time set forth in the notice for the submission and opening of bids or proposals (unless a shorter time is deemed necessary for a particular procurement by the Procurement Manager). Such notice shall be given by publication on the City's eProcurement website, other various internet based posting websites and in the Procurement Office. The notice shall state the place, date and time of the bid or proposal opening. Invitations for bids or notices of the availability of invitations for bids shall be mailed or otherwise furnished to a sufficient number of bidders for the purpose of securing competition. Bidder lists may serve as a basis for soliciting competitive sealed bids. Notices of availability shall indicate where, when and for how long invitations for bids may be obtained; generally describe the supply, service, or construction desired; and may contain other appropriate information.
- 5.2.8 **PUBLIC AVAILABILITY.** A copy of the invitation for bids shall be made available for public inspection at the Procurement Division.
- 5.2.9 **PRE-BID CONFERENCES.** Pre-bid conferences may be conducted to explain the procurement requirements. They shall be announced to all prospective bidders known to have received an invitation for bids. The conference should be held long enough after the invitation for bids has been issued to allow bidders to become familiar with it, but sufficiently before bid opening to allow consideration of the conference results in preparing their bids. Nothing stated at the pre-bid conference shall change the invitation for bids unless a change is made in written addenda as provided in Subsection 5.2.10 — Addenda to Invitation for Bids.
- 5.2.10 **ADDENDA TO INVITATIONS FOR BIDS.** Any modifications of the invitation for bids made prior to bid opening shall be by addenda provided in writing to the same persons to whom the original solicitation documents were mailed or otherwise provided. Each addendum shall reference the portions of the



invitation for bids it amends.

- 5.2.11 **TIMELINESS.** All addenda shall be distributed within a reasonable time to allow prospective bidders to consider them in preparing their bids. If the time and date set for receipt of bids will not permit such preparation, such time shall be increased to the extent possible in the addendum or, if necessary, by telegram, telephone or facsimile and confirmed in the addendum.

5.3 PRE-OPENING MODIFICATION OR WITHDRAWAL OF BIDS

- 5.3.1 **PROCEDURE.** Bids may be modified or withdrawn by written notice duly executed and delivered to the office of the Procurement Manager at any time prior to the deadline for submitting bids. A notice of withdrawal or modification must be in writing and signed by a person duly authorized to do so. In a case where signed by deputy or subordinate, the principal's proper written authority to such deputy or subordinate must accompany the notice of withdrawal or modification. After expiration of the period for receipt of bids, no bid may be withdrawn or modified, except in accordance with Section 5.6 Mistakes in Bids.
- 5.3.2 **DISPOSITION OF BID SECURITY.** If a bid is withdrawn in accordance with this Section, the bid security, if any, shall be returned to the bidder.
- 5.3.3 **RECORDS.** All documents relating to the modification or withdrawal of bids shall be made a part of the appropriate procurement file.

5.4 LATE BIDS, LATE WITHDRAWALS, AND LATE MODIFICATIONS

- 5.4.1 **DEFINITION.** Any bid received in the City Clerk's office after the time and date set for receipt of bids is late. Any withdrawal or modification of a bid received in the City Clerk's office after the time and date set for opening of bids is late.
- 5.4.2 **TREATMENT.** No late bid, late modification, or late withdrawal will be considered. However, a timely bid, bid withdrawal, or bid modification that is misplaced by City personnel will be considered if discovered before the contract award.
- 5.4.3 **NOTICE.** Bidders submitting late bids that will not be considered for award shall be so notified as soon as practicable.
- 5.4.4 **RECORDS.** Records equivalent to those required in Section 5.3.3 — Pre-Opening Modification or Withdrawal of Bids, Records shall be made and kept for each late bid, late modification, or late withdrawal.



5.5 RECEIPT, OPENING, AND RECORDING OF BIDS

- 5.5.1 RECEIPT. Upon its receipt in the City Clerk's office, each bid and modification shall be time-stamped but not opened and shall be stored in a secure place until the time and date set for bid opening.
- 5.5.2 OPENING AND RECORDING. Bids and modifications shall be opened publicly by the Procurement Manager, or designee, and the City Clerk, or designee, at the time and place designated in the public notice of the invitation for bids. Bids shall be read aloud and a tabulation of all bids received shall be made available for public inspection after the opening of the bid. No late bids shall be accepted or opened if received after the date and time specified in the public bid notice. It will be the bidder's responsibility to make arrangements for the return of the bid package at their expense.

5.6 MISTAKES IN BIDS

- 5.6.1 GENERAL. Correction or withdrawal of a bid after the deadline for submitting bids, because of an inadvertent and non-judgmental mistake in the bid, requires careful consideration to protect the integrity of the competitive bidding system, and to assure fairness. If the mistake is attributable to an error in judgment, the bid may not be corrected. Bid correction or withdrawal by reason of a non-judgmental mistake is permissible but only to the extent it is not contrary to the interests of the City or the fair treatment of other bidders.
- 5.6.2 CONFIRMATION OF BID. When the Procurement Manager knows or has reason to conclude that a mistake has been made, he or she should request the bidder to confirm the bid. Situations in which confirmation should be requested include obvious and apparent errors on the face of the bid or a bid unreasonably lower than the other bids submitted. If the bidder alleges mistake, the bid may be corrected or withdrawn if the conditions set forth in this Section are met.

5.7 MODIFICATION AND WITHDRAWAL OF BIDS

- 5.7.1 MINOR INFORMALITIES. Minor informalities are matters of form rather than substance evident from the bid document, or insignificant mistakes that can be waived or corrected without prejudice to other bidders. That is, the effect on price, quantity, quality, delivery, or contractual conditions is negligible. The Procurement Manager may waive such informalities or allow the bidder to correct them depending on which is in the best interest of the City. Examples include the failure of a bidder to:

5.7.1.1 *return the number of signed bids required by the Invitation for Bids;*



5.7.1.2 *sign the bid, but only if the unsigned bid is accompanied by other material indicating the bidder's intent to be bound; or*

5.7.1.3 *acknowledge receipt of an addendum to the invitation for bids, but only if:*

5.7.1.3.1 it is clear from the bid that the bidder received the addendum and intended to be bound by its terms; or

5.7.1.3.2 the addendum involved had a negligible effect on price, quantity, quality, or delivery.

5.7.2 **MISTAKES WHERE INTENDED CORRECT BID IS NOT EVIDENT.** If within twenty four (24) hours after bids are opened, any bidder files a duly signed written notice with the City, through the office of the Procurement Manager, and within five (5) calendar days thereafter demonstrates to the satisfaction of the City, by clear and convincing evidence, that there was a material and substantial mistake in the preparation of the bid or that the mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident, then the bidder may withdraw its bid. Thereafter, the bidder will be disqualified from further bidding on the subject contract.

5.7.3 **MISTAKES WHERE INTENDED CORRECT BID IS EVIDENT.** If the mistake and the intended correct bid are clearly evident on the face of the bid document, the bid shall be corrected to the intended correct bid and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid document are typographical errors, errors in extending unit prices, transposition errors, and arithmetical errors.

5.7.4 **DETERMINATIONS REQUIRED.** When a bid is corrected or withdrawn, or correction or withdrawal is denied, the Procurement Manager shall prepare a written determination showing that the relief was granted or denied in accordance with these regulations.

5.8 **BID EVALUATION AND AWARD**

5.8.1 **BASIS FOR AWARD.** Award of bids and quotes shall be made to the bidder(s) which are deemed by the City as being the most responsive and responsible meeting all the specifications set forth in the solicitation. The award will be to the lowest bidder, provided that such bidder has met all other criteria as set forth in the bid requirements. In addition to proposed price, the City may consider the criteria that may be used in the awards including, but not limited to:

5.8.1.1 *Adheres to or exceeds all performance, technical specifications and contract requirements; or*



- 5.8.1.2 *Delivery time frame or, if services, start and completion time frames; or*
- 5.8.1.3 *Guarantees and Warranties; or*
- 5.8.1.4 *Company references and financial status; or*
- 5.8.1.5 *Past experience with similar services, materials or equipment; or*
- 5.8.1.6 *Length of time committed for firm pricing; or*
- 5.8.1.7 *Adherence to all required securities and other submittals with bid response.*

The City reserves the right to use both primary and secondary suppliers/contractors or to use multiple sources to protect the City's overall interests.

5.8.2 **PRODUCT ACCEPTABILITY.** The invitation for bids may set forth any evaluation criterion to be used in determining product acceptability. It may require the submission of bid samples, descriptive literature, technical data, or other material. It may also provide for accomplishing any of the following prior to award:

- 5.8.2.1 *inspection or testing of a product prior to award for such characteristics as quality or workmanship, or*
- 5.8.2.2 *examination of such elements as appearance, finish, taste, or feel; or*
- 5.8.2.3 *other examinations to determine whether it conforms with any other purchase description requirements.*

The acceptability evaluation is not conducted for the purpose of determining whether one bidder's item is superior to another but only to determine that a bidder's offering is acceptable as set forth in the invitation for bid. Any bidder's offering which does not meet the acceptability requirements shall be rejected as non-responsive.

5.8.3 **DETERMINATION OF LOWEST BIDDER.** Following determination of product acceptability, if any is required, bids will be evaluated to determine which bidder offers the lowest cost to the City in accordance with the evaluation criteria. Examples of such criteria include, but are not limited to, transportation cost, and ownership or life cycle cost formulas. Evaluation factors need not be precise predictors of actual future cost, but to the extent possible such evaluation factors shall:

- 5.8.3.1 *be reasonable estimates based upon information the City has*



available concerning future use; and

5.8.3.2 *treat all bids equitably.*

5.8.4 **RESTRICTIONS.** Nothing in this Section shall be deemed to permit contract award to a bidder submitting a higher quality item than that designated in the invitation for bids, if such bidder is not also the lowest as determined under this Section. Further, this Section does not permit negotiations with any bidder, except pursuant to Section 2.2 — Only One Bid or Proposal Received. Also, if all bids received are above the budget appropriation for such contract, the Procurement Manager may negotiate with the lowest bidder a price at or below the budget appropriation or may reject all bids.

5.9 **LOW TIE BIDS**

5.9.1 **DEFINITION.** Low tie bids are low responsive bids from responsible bidders that are identical in price.

5.9.2 **TIE BIDS.** If two (2) or more bidders are tied, the tie may be broken and the successful bidder selected in accordance with the best interest of the City, and the following may be given consideration:

5.9.2.1 *Quality of the items or services bid if such quality is ascertainable.*

5.9.2.2 *Delivery time, if provided in the bid by the bidders.*

5.9.2.3 *Certification of a "Drug Free Workplace Program" which meets criteria established in Florida Statutes Section 287.087.*

5.9.2.4 *Location of the vendor with the following award preferences:*

5.9.2.4.1 A City of Punta Gorda vendor

5.9.2.4.2 A Charlotte County vendor

5.9.2.4.3 A Florida Vendor

5.9.2.5 *If the above criteria are impossible to determine with any reasonableness or do not resolve the issue, the award may be given to that bidder whose bid was received earliest in time by the City as indicated by the time clock stamp impressed upon the bid envelope of each bidder.*



5.10 NOTICE OF AWARD

The award shall be approved by the policy's proper level of authority. Upon receiving the approval, a notice of award shall be provided as soon as practicable by the Procurement Manager.



6. COMPETITIVE SEALED BIDDING – STATE AND FEDERAL FUNDED PROJECTS (LOCAL AGENCY PROJECTS “LAP”)

6.1 USE OF COMPETITIVE SEALED BIDDING

- 6.1.1 CONDITIONS FOR USE. Contracts shall be awarded by competitive sealed bidding.

6.2 PREPARATION FOR BIDDING

- 6.2.1 REQUESTING DEPARTMENT RESPONSIBILITY PRIOR TO SUBMITTING PROJECTS FOR BID. The requesting Department shall be responsible for review functions prior to submitting the project to Procurement for bid preparations:

- 6.2.1.1 *Reviewing all specifications for completeness and accuracy;*
- 6.2.1.2 *Reviewing all plans and drawings for completeness and accuracy;*
- 6.2.1.3 *Obtain all regulatory agency permits and submit copies of permits to Procurement for records retention;*
- 6.2.1.4 *Review and compare Engineer’s estimate by utilizing current pricing data established through recent contract bidding averages, commercial estimating guides for Public Works Projects and FDOT method of estimating. The Engineer’s estimate shall be valid and accurate with current reference data available. Department shall provide documentation and sources utilized for validating the Engineer’s estimate.*
 - 6.2.1.4.1 National Highway System project. In all instances the requesting Department shall utilize FDOT method of estimating to validate Engineer’s estimates for National Highway Systems projects.

- 6.2.2 SUBMITTING PROJECTS TO PROCUREMENT FOR BID. Upon meeting the requirements above in 6.2.1, the Department shall submit the following documents to Procurement for bidding of the project:

- 6.2.2.1 *Construction checklist shall be completed with all required signatures.*
- 6.2.2.2 *Copies of all permits and validation of Engineer’s estimate.*
- 6.2.2.3 *Bid general and technical specifications shall be submitted in a hard copy and digital format. One (1) complete set of plans/drawing in hard copy and digital format.*



6.3 INVITATION TO BID

- 6.3.1 The invitation for bids is used to initiate a competitive sealed bid procurement.
- 6.3.2 An invitation for bids shall be issued and shall include a project description, specifications, reference for project-related documents, and contractual terms and conditions applicable to the procurement. The invitation for bids shall also include the following:
- 6.3.2.1 *Advertisement and public notice information. All federal and state funded construction projects shall be advertised a minimum of three (3) weeks in a local newspaper. The construction project shall be publicly noticed in the Procurement Office, City Clerk's Office, City's official website and eProcurement website.*
 - 6.3.2.2 *Instruction and information to bidders concerning the bid submission requirements, including the time and date set for receipt of bids, the address of the office to which bids are to be delivered, the maximum time for bid acceptance by the City and any other pertinent information;*
 - 6.3.2.3 *Construction contract timeframes for substantial and final completion shall be stated in the invitation for bids; and*
 - 6.3.2.4 *Warranty, project guarantee and bonding or other security requirements, as applicable.*
- 6.3.3 **INCORPORATION BY REFERENCE.** The invitation for bids may incorporate documents by reference provided that the invitation for bids specifies where such documents can be obtained
- 6.3.4 **ACKNOWLEDGEMENT OF ADDENDA.** The invitation for bids shall require the acknowledgment of the receipt of all addenda issued.
- 6.3.5 **BIDDING TIME.** Bidding time is the period of time between the date of distribution of the invitation for bids and the time and date set for receipt of bids. In each case, bidding time will be set to provide bidders a reasonable time to prepare their bids. A minimum of three (3) weeks shall be provided.
- 6.3.6 **BIDDER SUBMISSIONS.** Bids shall be submitted in a sealed envelope, which shall be clearly identified as a bid on the exterior of the envelope and delivered to the Office of the City Clerk. The invitation for bids shall provide a space in which the bid price shall be inserted and which the bidder shall sign and submit along with all other necessary submissions.
- 6.3.7 **PUBLIC NOTICE.** Public notice of the invitation for bids shall be given not less than three (3) weeks prior to the date and time set forth in the notice for



the submission and opening of bids. Such notice shall be given by publication in a newspaper of general circulation in the City of Punta Gorda. The notice shall state the place, date and time of the bid opening. Invitations for bids or notices of the availability of invitations for bids shall be mailed or otherwise furnished to a sufficient number of bidders for the purpose of securing competition. Bidder lists may serve as a basis for soliciting competitive sealed bids. Notices of availability shall indicate where, when and for how long invitations for bids may be obtained; generally describe the supply, service, or construction desired; and may contain other appropriate information.

- 6.3.8 PUBLIC AVAILABILITY. A copy of the invitation for bids and related project documents shall be made available for public inspection at the Procurement Division and on the City's eProcurement website.
- 6.3.9 PRE-BID CONFERENCES. Pre-bid conferences shall be conducted to explain the procurement requirements. They shall be announced to all prospective bidders known to have received an invitation for bids. The conference should be held long enough after the invitation for bids has been issued to allow bidders to become familiar with it, but sufficiently before bid opening to allow consideration of the conference results in preparing their bids. Nothing stated at the pre-bid conference shall change the invitation for bids unless a change is made in written addenda as provided in Subsection 6.2.10 — Addenda to Invitation for Bids.
- 6.3.10 ADDENDA TO INVITATIONS FOR BIDS. All major modifications to the plans or specifications shall require approval from the funding agency prior to issuance. Any modifications of the invitation for bids made prior to bid opening shall be by addenda provided in writing to the same persons to whom the original solicitation documents were mailed or otherwise provided. Each addendum shall reference the portions of the invitation for bids it amends.
- 6.3.11 TIMELINESS. All addenda shall be distributed within a reasonable time to allow prospective bidders to consider them in preparing their bids. If the time and date set for receipt of bids will not permit such preparation, such time shall be increased to the extent possible in the addendum or, if necessary, by telegram, telephone or facsimile and confirmed in the addendum.

6.4 BIDDER SELECTION

- 6.4.1 REQUIREMENT. Except as noted below, all bidders must currently be pre-qualified and listed in the Florida Department of Transportation pre-qualified bidder list.
- 6.4.2 EXCEPTIONS. The City does not require the Bidder to be a Florida Department of Transportation pre-qualified bidder if the project is defined as follows:



6.4.2.1 *Federal Highway System or State Highway System bidding contracts of \$250,000 or less or if constructing buildings.*

6.4.2.2 *Non-Federal Highway System, Non-State Highway System or Non-Federal Aid Highway bidding contracts.*

6.4.3 **DISADVANTAGED BUSINESS ENTERPRISE (DBE).** The City shall follow the established Florida Department of Transportation's DBE program. DBE provisions shall be stated in the Invitation to Bid.

6.4.3.1 *Bidder's shall submit with their bid a DBE Utilization Plan.*

6.5 PRE-OPENING MODIFICATION OR WITHDRAWAL OF BIDS

6.5.1 **PROCEDURE.** Bids may be modified or withdrawn by written notice duly executed and delivered to the office of the Procurement Manager at any time prior to the deadline for submitting bids. A notice of withdrawal or modification must be in writing and signed by a person duly authorized to do so. In a case where signed by deputy or subordinate, the principal's proper written authority to such deputy or subordinate must accompany the notice of withdrawal or modification. After expiration of the period for receipt of bids, no bid may be withdrawn or modified, except in accordance with Section 5.6 Mistakes in Bids.

6.5.2 **DISPOSITION OF BID SECURITY.** If a bid is withdrawn in accordance with this Section, the bid security, if any, shall be returned to the bidder.

6.5.3 **RECORDS.** All documents relating to the modification or withdrawal of bids shall be made a part of the appropriate procurement file.

6.6 LATE BIDS, LATE WITHDRAWALS, AND LATE MODIFICATIONS

6.6.1 **DEFINITION.** Any bid received in the City Clerk's office after the time and date set for receipt of bids is late. Any withdrawal or modification of a bid received in the City Clerk's office after the time and date set for opening of bids is late.

6.6.2 **TREATMENT.** No late bid, late modification, or late withdrawal will be considered. However, a timely bid, bid withdrawal, or bid modification that is misplaced by City personnel will be considered if discovered before the contract award.

6.6.3 **NOTICE.** Bidders submitting late bids that will not be considered for award shall be notified as soon as practicable.

6.6.4 **RECORDS.** Records equivalent to those required in Section 6.3.3 — Pre-Opening Modification or Withdrawal of Bids, Records shall be made and kept for each late bid, late modification, or late withdrawal.



6.7 RECEIPT, OPENING, AND RECORDING OF BIDS

- 6.7.1 RECEIPT. Upon its receipt in the City Clerk's office, each bid and modification shall be time-stamped but not opened and shall be stored in a secure place until the time and date set for bid opening.
- 6.7.2 OPENING AND RECORDING. Bids and modifications shall be opened publicly by the Procurement Manager, or designee, and the City Clerk, or designee, at the time and place designated in the public notice of the invitation for bids. Bids shall be read aloud and a tabulation of all bids received shall be made available for public inspection after the opening of the bid. No late bids shall be accepted or opened if received after the date and time specified in the public bid notice. It will be the bidder's responsibility to make arrangements for the return of the bid package at their expense.
- 6.7.3 The City Clerk or their designee shall forward a certified bid tabulation to the funding agency within a reasonable timeframe.

6.8 MISTAKES IN BIDS

- 6.8.1 GENERAL. Correction or withdrawal of a bid after the deadline for submitting bids, because of an inadvertent and non-judgmental mistake in the bid, requires careful consideration to protect the integrity of the competitive bidding system, and to assure fairness. If the mistake is attributable to an error in judgment, the bid may not be corrected. Bid correction or withdrawal by reason of a non-judgmental mistake is permissible but only to the extent it is not contrary to the interests of the City or the fair treatment of other bidders.
- 6.8.2 CONFIRMATION OF BID. When the Procurement Manager knows or has reason to conclude that a mistake has been made, he or she should request the bidder to confirm the bid. Situations in which confirmation should be requested include obvious and apparent errors on the face of the bid or a bid unreasonably lower than the other bids submitted. If the bidder alleges a mistake, the bid may be corrected or withdrawn if the conditions set forth in this Section are met.

6.9 MODIFICATION AND WITHDRAWAL OF BIDS

- 6.9.1 MINOR INFORMALITIES. Minor informalities are matters of form rather than substance evident from the bid document, or insignificant mistakes that can be waived or corrected without prejudice to other bidders. That is, the effect on price, quantity, quality, delivery, or contractual conditions is negligible. The Procurement Manager may waive such informalities or allow the bidder to correct them depending on which is in the best interest of the City. Examples include the failure of a bidder to:

6.9.1.1 *return the number of signed bids required by the Invitation for*



Bids;

- 6.9.1.2 *sign the bid, but only if the unsigned bid is accompanied by other material indicating the bidder's intent to be bound; or*
- 6.9.1.3 *acknowledge receipt of an addendum to the invitation for bids, but only if:*
 - 6.9.1.3.1 it is clear from the bid that the bidder received the addendum and intended to be bound by its terms; or
 - 6.9.1.3.2 the addendum involved had a negligible effect on price, quantity, quality, or delivery.
- 6.9.2 **MISTAKES WHERE INTENDED CORRECT BID IS NOT EVIDENT.** If within twenty four (24) hours after bids are opened, any bidder files a duly signed written notice with the City, through the office of the Procurement Manager, and within five (5) calendar days thereafter demonstrates to the satisfaction of the City, by clear and convincing evidence, that there was a material and substantial mistake in the preparation of the bid or that the mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident, then the bidder may withdraw their bid. Thereafter, the bidder will be disqualified from further bidding on the subject contract.
- 6.9.3 **MISTAKES WHERE INTENDED CORRECT BID IS EVIDENT.** If the mistake and the intended correct bid are clearly evident on the face of the bid document, the bid shall be corrected to the intended correct bid and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid document are typographical errors, errors in extending unit prices, transposition errors, and arithmetical errors.
- 6.9.4 **DETERMINATIONS REQUIRED.** When a bid is corrected or withdrawn, or correction or withdrawal is denied, the Procurement Manager shall prepare a written determination showing that the relief was granted or denied in accordance with these regulations.

6.10 BID EVALUATION AND AWARD

- 6.10.1 **EVALUATION.** Procurement shall examine and certify bids to ensure compliance with specifications and complete submittal of all required documents. An evaluation of all responsive bids will be prepared by Procurement. The evaluation shall include all unit prices, extended prices, total project cost, completion timeframes, payment terms and variances referenced.
- 6.10.2 **SUBMITTAL OF EVALUATION TO FUNDING AGENCY.** Upon request by the Funding agency, Procurement shall submit an evaluation for review and approval for award of contract.
- 6.10.3 **BASIS FOR AWARD.** Award of bids shall be made to the bidder(s) which are



deemed by the City as being the most responsive and responsible meeting all the specifications set forth in the solicitation. The award will be to the lowest bidder, provided that such bidder has met all other criteria as set forth in the bid requirements. In addition to proposed price, the City may consider the criteria that may be used in the awards including, but not limited to:

6.10.3.1 *Adheres to or exceeds all performance, technical specifications and contract requirements; or*

6.10.3.2 *Start and completion time frames; or*

6.10.3.3 *Guarantees and Warranties; or*

6.10.3.4 *Company references and financial status; or*

6.10.3.5 *Past experience with similar service; or*

6.10.3.6 *Adherence to all required securities and other submittals with bid response.*

6.10.4 **DETERMINATION OF LOWEST BIDDER.** Following determination of responsive, responsible bids, if any is required, bids will be evaluated to determine which bidder offers the lowest cost to the City in accordance with the evaluation criteria. Examples of such criteria include, but are not limited to, transportation cost, and ownership or life cycle cost formulas. Evaluation factors need not be precise predictors of actual future cost, but to the extent possible such evaluation factors shall:

6.10.4.1 *be reasonable estimates based upon information the City has available concerning future use; and*

6.10.4.2 *treat all bids equitably.*

6.10.5 **RESTRICTIONS.** Nothing in this Section shall be deemed to permit contract award to a bidder submitting a higher quality item than that designated in the invitation for bids, if such bidder is not also the lowest as determined under this Section. Further, this Section does not permit negotiations with any bidder, except pursuant to Section 2.2 — Only One Bid or Proposal Received.

6.11 LOW TIE BIDS

6.11.1 **DEFINITION.** Low tie bids are low responsive bids from responsible bidders that are identical in price.

6.11.2 **TIE BIDS.** If two (2) or more bidders are tied, the tie may be broken and the successful bidder selected in accordance with the best interest of the City, and the following may be given consideration:



- 6.11.2.1 *Quality of the items or services bid if such quality is ascertainable.*
- 6.11.2.2 *Delivery time, if provided in the bid by the bidders.*
- 6.11.2.3 *Certification of a "Drug Free Workplace Program" which meets criteria established in Florida Statutes Section 287.087.*
- 6.11.2.4 *Location of the vendor with the following award preferences:*
 - 6.11.2.4.1 A City of Punta Gorda vendor
 - 6.11.2.4.2 A Charlotte County vendor
 - 6.11.2.4.3 A Florida Vendor
- 6.11.2.5 *If the above criteria are impossible to determine with any reasonableness or do not resolve the issue, the award may be given to that bidder whose bid was received earliest in time by the City as indicated by the time clock stamp impressed upon the bid envelope of each bidder.*

6.12 NOTICE OF AWARD

- 6.12.1 The Funding agency and this policy's proper level of authority shall approve the award. Upon receiving the approval, a notice of award shall be provided as soon as practicable by the Procurement Manager.
- 6.12.2 Upon receipt of all required contractual documents, a notice to proceed and purchase order shall be issued to the awarded bidder.



7. INVITATION TO NEGOTIATE

7.1 CONDITIONS FOR USE OF INVITATION TO NEGOTIATE

7.1.1 GENERAL. If the City determines that the use of an invitation to bid or a request for proposals will not result in the best value to the City, Procurement may procure commodities and contractual services by competitive sealed replies. The City's written determination must specify reasons that explain why negotiation may be necessary in order for the City to achieve the best value and must be approved in writing by the City Manager or designee prior to the advertisement of an invitation to negotiate. An invitation to negotiate shall be made available to all vendors simultaneously and must include a statement of the commodities or contractual services sought; the time and date for the receipt of replies and of the public opening; and all terms and conditions applicable to the procurement, including the criteria to be used in determining the acceptability of the reply. If the City contemplates renewal of the contract, that fact must be stated in the invitation to negotiate.

The key element in determining best value is the need for flexibility. The invitation to negotiate method differs from competitive sealed bidding in two important ways:

7.1.1.1 *it permits discussion with competing offerors and changes in their proposals including price; and*

7.1.1.2 *it allows comparative judgmental evaluations to be made when selecting among acceptable proposals for award of the contract.*

7.2 CONTENT OF THE INVITATION TO NEGOTIATE

7.2.1 The invitation to negotiate shall be prepared in accordance with Section 5.2 — Invitation to Bids and shall also include:

7.2.1.1 *a statement that discussions may be conducted with offerors who submit determined to be reasonably susceptible of being selected for award, but that proposals may be accepted without such discussions; and*

7.2.1.2 *a statement of if, when and how price should be submitted*

7.3 SUBMITTAL PREPARATION TIME

Submittal preparation time shall be set to provide offerors a reasonable time to prepare their response. A minimum of fourteen (14) calendar days shall be provided unless a shorter time is deemed necessary for a particular procurement as determined by the Procurement Manager.



7.4 FORM OF SUBMITTAL

The procedure for which responses are to be submitted, including any forms for that purpose, may be designated as a part of the request for proposals.

7.5 PUBLIC NOTICE

Public Notice shall be given by distributing the invitation to negotiate in the same manner provided for distributing an invitation for bids under Subsection 5.2.7 — Public Notice.

7.6 PRE-SUBMITTAL CONFERENCES

Pre-submittal conferences may be conducted in accordance with Subsection 5.2.9 — Pre-Bid Conferences. Any such conference should be held prior to submission of initial proposals.

7.7 ADDENDA TO REQUEST FOR PROPOSALS

Addenda to requests for proposals may be made in accordance with Subsection 5.2.10 — Addenda to Invitations for Bids, prior to submission of proposals.

7.8 MODIFICATION OR WITHDRAWAL OF SUBMITTAL

Submittal may be modified or withdrawn prior to the established due date in accordance with Section 5.3 — Pre-Opening Modification or Withdrawal of Bids. For the purposes of this Section, the established due date is the time and date by which responses must be submitted, provided that only offerors who submitted responses by the time announced for receipt of submittals may submit best and final offers.

7.9 LATE PROPOSALS

Any submittal received at the place designated for the receipt of submittal after the time and date set for the submission of response is late. Late submittals may only be considered in accordance with Section 5.4 — Late Bids, Late Withdrawals, and Late Modifications.

7.10 RECEIPT AND REGISTRATION OF PROPOSALS

Submittals shall be opened publicly and in the presence of the City Clerk, or designee, and the Procurement Manager or designee. The Procurement Manager will read aloud only who submitted a response and the City Clerk will record the same. Response and modifications shall be submitted in a sealed envelope which shall be clearly identified as a invitation to negotiate on the exterior of the envelope and delivered to the Office of the City Clerk. Response and modifications shall be time-stamped upon receipt and held in a secure place by the City Clerk until the established due date. After the date established for receipt of submittals, a tabulation shall be prepared which shall include



for all proposals the name of each offeror, the number of modifications received, if any, and a description sufficient to identify the supply, service, or construction item offered. Submittals and modifications shall be shown only to City personnel having a legitimate interest in them, except as required by public record laws.

7.11 PROPOSAL DISCUSSIONS WITH INDIVIDUAL OFFERORS

7.11.1 PURPOSES OF DISCUSSIONS. Discussion may or may not be held with individual offerors prior to the evaluation committee scoring the offerors. Discussions are held to:

7.11.1.1 *facilitate a determination of who is a responsible and responsive offeror;*

7.11.1.2 *promote understanding of the City's requirements and the offerors' submittal; and*

7.11.1.3 *facilitate arriving at a contract that will be most advantageous to the City, taking into consideration price and the other evaluation factors set forth in the request for proposals and the best interest of the City.*

7.11.2 CONDUCT OF DISCUSSIONS. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussions and revisions of proposals. The Procurement Manager should establish procedures and schedules for conducting discussions.

7.11.2.1 *Clarifications, revisions and changes in the submittals may be made by the offerors after submission and prior to award. Any clarification or revision of the proposal must be reduced to writing by the offeror.*

7.11.2.2 *Every precaution must be taken to assure fair and equal treatment of all offerors. Thus, responsive offerors must be afforded an equal opportunity to discuss and revise their proposals.*

7.11.2.3 *Proposal information shall be a public record to the extent provided by law, including the Public Records Act, Florida Statutes, Chapter 119, and shall be available to the public as provided by law and applicable City ordinances and resolutions.*

7.12 EVALUATION OF SUBMITTALS

7.12.1 In order to qualify as responsible and responsive, an offeror must meet the evaluation criteria as they relate to this ITN.

7.12.2 Submittal Evaluation Process – The City will evaluate responses to the ITN



in the following manner:

- 7.12.2.1 *Initial Review. Procurement will review and qualify submittals for completeness. City will not provide Offerors with information concerning the status of submittals while they are being reviewed. The initial review will consider whether all mandatory response requirements were submitted and whether the offer meets the City's objective and/or requirements. City may reject from further consideration any response that fails to meet objectives and/or requirements.*
- 7.12.2.2 Detailed Evaluation Phase. Qualified submittals determined during the initial review phase to meet mandatory response requirements will be further evaluated during the Detailed Evaluation Phase. A committee will evaluate the ITN submittals based on predetermined evaluation criteria, which include but shall not be limited to, those items on the evaluation form.
- 7.12.2.3 The committee will short list the Offerors based on their ordinal scores (#1 ranked = lowest ordinal score). The committee may either invite the top three (3) ranked Offerors or the number one top ranked offeror to make oral presentations for the committee following the Detailed Evaluation Phase. Each session may include, but not be limited to, a presentation from the Offeror and questions from City. City will make an effort to provide questions to be addressed in these sessions to the respective Offeror's prior to the session. Offerors must provide written responses to all questions so provided and their complete presentation, inclusive of handouts, on digital format. Costs incurred by a Offeror to make this presentation will not be reimbursed by City. City will make an effort to provide at least three (3) days notice to respective Respondents prior to their scheduled presentation date.
- 7.12.2.4 The committee will evaluate and score all presentations based on criteria determined by the City prior to the presentation date.
- 7.12.3 Negotiation Phase. Following the Detailed Evaluation Phase, City, in its sole discretion, may enter into a Negotiation Phase with all short listed Offerors or the top ranked Offeror. City will have the option to negotiate Offeror's submittal, including but not limited to proposed scope, pricing, timelines and value added features. If a Negotiation Phase is not used, City, in its sole discretion, may proceed in making an award based upon the Detailed Evaluation Phase.
- 7.12.4 Best and Final Offer Phase. Following the Negotiation Phase, if any, the City in its sole discretion may proceed in making an award, or may enter into a Best and Final Offer Phase. A Best and Final Offer Phase would allow the



requested Offerors to modify original offers, incorporating changes discussed during the Negotiation Phase. Best and Final Offers would then be re-evaluated by the Evaluation Committee, using the criteria outlined in the evaluation form of this ITN.

7.12.4.1 If a Best and Final Offer Phase is not used, City may proceed in making an award by formalizing any and all negotiated changes to the ITN in writing, and submitting the revised ITN to the Selected Offeror for review prior to making an award.

7.13 AWARD.

The Procurement Manager shall make a written determination showing the basis on which the award was found to be most advantageous to the City.



8. COMPETITIVE SEALED PROPOSALS

8.1 CONDITIONS FOR USE OF COMPETITIVE SEALED PROPOSALS

8.1.1 GENERAL DISCUSSION. A request for proposals may be used when the City is incapable of specifically defining the scope of work for which the commodities or contractual service is required and when the City is requesting that a qualified offeror propose commodities or contractual services to meet the specifications of the solicitation document. A request for proposals shall include, but is not limited to, general information, functional or general specifications, statement of work, proposal instruction and evaluation criteria. All requests for proposals shall state the relative importance of price and any other evaluation criteria. The City may engage in negotiations with responsive offerors to determine whether they are also responsible offerors and for the purpose of clarification to assure full understanding of and conformance to the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals and such revisions may be permitted after submissions and prior to award, pursuant to Section 6.12 — Proposal Discussions With Individual Offerors for the purpose of obtaining the best and final offer.

Competitive sealed bidding is the preferred method of procurement. However, if it is not practicable, competitive sealed proposals should be used. If competitive sealed bidding is practicable, it may then be considered whether competitive sealed bidding is advantageous. If competitive sealed bidding is determined not to be advantageous, competitive sealed proposals may be used.

The key element in determining advantageousness is the need for flexibility. The competitive sealed proposal method differs from competitive sealed bidding in two important ways:

- 8.1.1.1 *it permits discussion with competing offerors and changes in their proposals including price; and*
- 8.1.1.2 *it allows comparative judgmental evaluations to be made when selecting among acceptable proposals for award of the contract.*

An important difference between competitive sealed proposals and competitive sealed bidding is the finality of initial offers. Under competitive sealed proposals, alterations in the nature of a proposal, and in prices, may be made after proposals are opened. However, such changes are not generally allowed under competitive sealed bidding. Therefore, unless it is anticipated that a contract can be awarded solely on the basis of information submitted by bidders at the time of opening, competitive sealed bidding is not practicable or advantageous.



Another consideration is the type of evaluations needed after offers are received. Where evaluation factors involve the relative abilities of offerors to perform, including degrees of technical or professional experience or expertise, use of competitive sealed proposals is the appropriate procurement method. Similarly, such method is appropriate where the type of need to be satisfied involves weighing artistic and aesthetic values to the extent that price is a secondary consideration.

8.2 CONTENT OF THE REQUEST FOR PROPOSALS

The request for proposals shall be prepared in accordance with Section 5.2 — Invitation to Bids and shall also include:

- 8.2.1 a statement that discussions may be conducted with offerors who submit proposals determined to be reasonably susceptible of being selected for award, but that proposals may be accepted without such discussions; and
- 8.2.2 a statement of if, when and how price should be submitted

8.3 PROPOSAL PREPARATION TIME

Proposal preparation time shall be set to provide offerors a reasonable time to prepare their proposals. A minimum of fourteen (14) calendar days shall be provided unless a shorter time is deemed necessary for a particular procurement as determined by the Procurement Manager.

8.4 FORM OF PROPOSAL

The procedure for which proposals are to be submitted, including any forms for that purpose, may be designated as a part of the request for proposals.

8.5 PUBLIC NOTICE

Public Notice shall be given by distributing the request for proposals in the same manner provided for distributing an invitation for bids under Subsection 5.2.7 — Public Notice.

8.6 PRE-PROPOSAL CONFERENCES

Pre-proposal conferences may be conducted in accordance with Subsection 5.2.9 — Pre-Bid Conferences. Any such conference should be held prior to submission of initial proposals.



8.7 ADDENDA TO REQUEST FOR PROPOSALS

Addenda to requests for proposals may be made in accordance with Subsection 5.2.10 — Addenda to Invitations for Bids, prior to submission of proposals.

8.8 MODIFICATION OR WITHDRAWAL OF PROPOSALS

Proposals may be modified or withdrawn prior to the established due date in accordance with Section 5.3 — Pre-Opening Modification or Withdrawal of Bids. For the purposes of this Section, the established due date is the time and date by which best and final offers must be submitted, provided that only offerors who submitted proposals by the time announced for receipt of proposals may submit best and final offers.

8.9 LATE PROPOSALS

Any proposal received at the place designated for the receipt of proposals after the time and date set for the submission of proposals is late. Late proposals may only be considered in accordance with Section 5.4 — Late Bids, Late Withdrawals, and Late Modifications.

8.10 RECEIPT AND REGISTRATION OF PROPOSALS

Proposals shall be opened publicly and in the presence of the City Clerk, or designee, and the Procurement Manager or designee. The Procurement Manager will read aloud only who submitted a proposal and the City Clerk will record the same. Proposals and modifications shall be submitted in a sealed envelope which shall be clearly identified as a proposal on the exterior of the envelope and delivered to the Office of the City Clerk. Proposals and modifications shall be time-stamped upon receipt and held in a secure place by the City Clerk until the established due date. After the date established for receipt of proposals, a Register of Proposals shall be prepared which shall include for all proposals the name of each offeror, the number of modifications received, if any, and a description sufficient to identify the supply, service, or construction item offered. Proposals and modifications shall be shown only to City personnel having a legitimate interest in them, except as required by public record laws.

8.11 EVALUATION OF PROPOSALS

8.11.1 EVALUATION FACTORS IN THE REQUEST FOR PROPOSALS. The request for proposals should state all of the evaluation factors, which may include price, and their relative importance.

8.11.2 EVALUATION. The evaluation should be based on the evaluation factors set forth in the request for proposals and the best interest of the City. Numeric rating systems may be used.



8.12 PROPOSAL DISCUSSIONS WITH INDIVIDUAL OFFERORS

- 8.12.1 PURPOSES OF DISCUSSIONS. Discussion may or may not be held with individual offerors prior to the evaluation committee scoring the offerors. Discussions are held to:
- 8.12.1.1 *facilitate a determination of who is a responsible and responsive offeror;*
 - 8.12.1.2 *promote understanding of the City's requirements and the offerors' proposals; and*
 - 8.12.1.3 *facilitate arriving at a contract that will be most advantageous to the City, taking into consideration price and the other evaluation factors set forth in the request for proposals and the best interest of the City.*
- 8.12.2 CONDUCT OF DISCUSSIONS. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussions and revisions of proposals. The Procurement Manager should establish procedures and schedules for conducting discussions. If during discussions there is a need for any substantial clarification or a change in the request for proposals, the request shall be amended to incorporate such clarification or change, and such clarification or change shall be sent to all responsive offerors.
- 8.12.2.1 *Clarifications, revisions and changes in the proposals may be made by the offerors after submission and prior to award. Any clarification or revision of the proposal must be reduced to writing by the offeror.*
 - 8.12.2.2 *Every precaution must be taken to assure fair and equal treatment of all offerors. Thus, responsive offerors must be afforded an equal opportunity to discuss and revise their proposals.*
 - 8.12.2.3 *Proposal information shall be a public record to the extent provided by law, including the Public Records Act, Florida Statutes, Chapter 119, and shall be available to the public as provided by law and applicable City ordinances and resolutions.*



- 8.12.2.4 *A date and time should be established for the submission of best and final offers and shall be communicated to all responsive offerors. After such time, offerors shall not be allowed to revise or withdraw their proposals. Only one best and final offer may be submitted by each offeror, and it must be clearly designated as such.*
- 8.12.3 **AWARD.** The Procurement Manager shall make a written determination showing the basis on which the award was found to be most advantageous to the City.



9. PROCUREMENT OF CONSTRUCTION

9.1 APPLICATION

The provisions of this Section shall apply to all procurements of construction services.

9.2 BID SECURITY

9.2.1 REQUIREMENT FOR BID SECURITY. Bid security shall be required for all competitive sealed bidding for construction contracts when the price is estimated by the Procurement Manager to be Two Hundred Thousand Dollars (\$200,000.00) or greater. Nothing herein prevents the requirement of such bonds on construction contracts under Two Hundred Thousand Dollars (\$200,000.00) when the circumstances warrant.

9.2.2 AMOUNT OF BID SECURITY. Bid security shall be in an amount equal to at least five percent (5%) of the amount of the bid.

9.2.3 ACCEPTABLE BID SECURITY. Acceptable bid security shall be limited to:

9.2.3.1 *an annual or one-time bid bond in a form satisfactory to the City underwritten by a company licensed to issue bid bonds in this State; or*

9.2.3.2 *a bank certified check or cashiers check; or*

9.2.3.3 *an acceptable electronic bid bond through a City approved e-commerce clearinghouse for insurance.*

9.2.4 ACCEPTABLE SUBMISSION OF BID SECURITY

All forms of bid security shall be submitted in the format stated in the solicitation package prior to the due date and time established for the solicitation.

9.2.5 NON-SUBSTANTIAL FAILURE TO COMPLY. If a bid does not comply with the security requirements of this Policy, the bid shall be rejected as non-responsive, unless the failure to comply is determined by the Procurement Manager to be non-substantial where:

9.2.5.1 *only one (1) bid is received, and there is not sufficient time to rebid the contract; or*

9.2.5.2 *the amount of the bid security submitted, though less than the amount required by the Invitation for Bids, is equal to or greater than the difference in the price stated in the next higher acceptable bid; or*



9.2.5.3 *the bid guarantee becomes inadequate as a result of the correction of a mistake in the bid or bid modification if the bidder increases the amount of guarantee to required limits within forty-eight (48) hours after the bid opening.*

9.3 PERFORMANCE AND PAYMENT BONDS - CONSTRUCTION

9.3.1 WHEN REQUIRED - AMOUNTS. When a construction contract is awarded in an amount of Two Hundred Thousand Dollars (\$200,000.00) or greater, the following bonds or security shall be delivered to the City and shall become binding on the parties upon the execution of the contract:

9.3.1.1 *a **performance bond** satisfactory to the City, executed by a surety company authorized to do business in this State or otherwise secured in a manner satisfactory to the City, in an amount equal to one hundred percent (100%) of the price specified in the contract; and*

9.3.1.2 *a **payment bond** satisfactory to the City, executed by a surety company authorized to do business in this State or otherwise secured in a manner satisfactory to the City, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract. The bond shall be in an amount equal to one hundred percent (100%) of the price specified in the contract.*

9.3.2 ALTERNATE PAYMENT BOND. An alternative form of security in the form of cash, a money order, a certified check, a cashier's check, or an irrevocable letter of credit may be used in lieu of performance and payment bonds when deemed appropriate by the City Manager.

9.3.3 AUTHORITY TO REQUIRE ADDITIONAL BONDS. Nothing in this Section shall be construed to limit the authority of the City to require a performance bond or other security in addition to those bonds, or in circumstances other than specified in this Section.

9.3.4 REDUCTION OF AMOUNT DURING PERFORMANCE. The Procurement Manager may reduce the amount of the performance bond as work is completed if such reduction is in the best interest of the City.

9.3.5 AUTHORIZED SURETIES. Surety companies executing bonds must appear on the U. S. Treasury Department's most current list and be authorized to transact business in the State of Florida.

9.4 BOND FORMS AND COPIES

9.4.1 BOND FORMS. The Procurement Manager shall promulgate the form of the bonds required by this Section, which shall be reviewed and approved by the City Attorney.



- 9.4.2 **CERTIFIED COPIES OF BONDS.** Any person may request and obtain from the City a certified copy of a bond upon payment of the cost of reproduction of the bond and postage, if any. A certified copy of a bond shall be prima facie evidence of the contents, execution, and delivery of the original.

9.5 **RESPONSIBILITY FOR SELECTION OF METHODS OF CONSTRUCTION SERVICES**

The City shall use a general contractor as the method for obtaining and implementing construction contracting, unless the City Council directs the use of some other method, including:

- 9.5.1 City Construction Management.
- 9.5.2 Multiple contractors managed by:
- 9.5.2.1 *A designated general contractor*
 - 9.5.2.2 *Construction manager*
 - 9.5.2.3 *Procurement agent*
 - 9.5.2.4 *Design build*
 - 9.5.2.5 *Any other commonly accepted construction method utilized by government or industry, which may be used to the benefit of the City.*

9.6 **INSURANCE REQUIREMENTS**

Construction contracts shall contain requirements for the protection of the City through sufficient insurance as specified by the City's Risk Manager. The form and adequate proof of all such insurance shall be approved by the Risk Manager prior to the execution of any contract by the City and prior to the issuance of purchase orders confirming the award of a construction contract.

9.7 **INDEMNIFICATION**

All contractors shall indemnify and hold harmless the City, its agents and employees from any damages, losses and liabilities arising out of or resulting from any operations connected with the construction project, by use of any improper materials, or by any act or omission of the contractor or its subcontractors, agents, servants or employees.



9.8 RIGHT OF CONSTRUCTION CONTRACT CHANGE

- 9.8.1 CITY-INITIATED CHANGE ORDERS. The City shall have the right based on a clause contained in each construction contract, to require changes in quantities, additions or deletions of work or other changes within the original intent of the contract. All changes to construction contracts must be approved in advance. Refer to Section 18 — Change Orders to Contracts and Agreements.
- 9.8.2 CONTRACTOR-REQUESTED CHANGE ORDERS. Change orders may be requested by contractors, in accordance with contract provisions, for such things as unforeseen field, regulatory, or market conditions and other emergencies, acts of God, and justifiable delays. Refer to Section 18 — Change Orders to Contracts and Agreements.
- 9.8.3 AMENDMENTS. All changes to construction contracts that alter the terms and conditions of the contract or provide for a change in scope of the project beyond the original intent, must be contained in a Field Change Order or formal amendment to the contract. Refer to Section 18 — Change Orders to Contracts and Agreements.



10. PROCUREMENT OF PROFESSIONAL SERVICES

10.1 POLICY

It is the policy of this City to publicly announce through the Procurement Division the requirements for above-bid amount Non-CCNA professional services and CCNA professional services and to award contracts on the basis of demonstrated capability and qualifications at a fair and reasonable price with the ultimate selection based on the best interest of the City and maximum value received.

The thresholds for the various CCNA and Non-CCNA professional services to be publicly announced are as follows:

- 10.1.1 Non-CCNA professional services for Twenty Five Thousand Dollars (\$25,000.00) and above.
- 10.1.2 CCNA professional services when the construction is estimated by the City to exceed the threshold of Two Hundred and Fifty Thousand Dollars (\$250,000.00).
- 10.1.3 CCNA professional services for a planning or study activity when the fee for professional services is Twenty-Five Thousand Dollars (\$25,000.00) and above.

10.2 PROCUREMENT OF ARCHITECTURAL, ENGINEERING, TESTING, LANDSCAPE ARCHITECTURAL, AND LANDSCAPING SERVICES, PURSUANT TO CCNA

- 10.2.1 REQUEST FOR QUALIFICATIONS SOLICITATION. Each time a service or group of services is required to be procured under the Consultant's Competitive Negotiations Act (CCNA), a request for qualifications will be sent to an appropriate list of vendors, and the submittals received shall be considered in accordance with this Section.
- 10.2.2 PROCEDURE FOR CCNA PROCUREMENTS. The procedure for CCNA procurements may be followed for the procurement of other professional services, as may be deemed by the Procurement Manager as being in the best interest of the City.
- 10.2.3 PUBLIC NOTICE. Public notice of the Request for Qualifications shall be given not less than fourteen (14) calendar days prior to the date and time set forth in the notice for the submission and opening of Qualifications submittals (unless a shorter time is deemed necessary for a particular procurement by the Procurement Manager). Such notice shall be given by publication on the City's eProcurement website, other various internet based posting websites and in the Procurement Office. The notice shall state the place, date and time of the opening. Request for Qualifications or notices of the availability of



Request for Qualifications shall be mailed or otherwise furnished to a sufficient number of offerors for the purpose of securing competition.

- 10.2.4 PUBLIC AVAILABILITY. A copy of the invitation for bids shall be made available for public inspection at the Procurement Division.
- 10.2.5 REVIEW OF QUALIFICATIONS. A duly appointed selection and negotiation committee shall review all qualifications and submittals of those persons responding to the request for proposals.
- 10.2.6 SHORT LIST. The selection and negotiation committee shall reduce the number of offerors (short list) to at least three (3) of the highest ranking firms.
- 10.2.7 DISCUSSIONS. Prior to short-listing the firms, the selection and negotiations committee may request presentations from all Offerors or the committee may hold discussions with all short-listed offerors. Such discussions may encompass formal presentations by each offeror. The requirements of presentations or discussion will be the same for each offeror short listed.
- 10.2.8 RANKING OF OFFERORS. The voting members of the selection and negotiation committee, after discussions/presentations by each short-listed offeror, will vote on the final ranking. The ranking of offerors shall indicate the committee's view of the offeror that will best serve the interest of the City.
- 10.2.9 NEGOTIATIONS. The selection and negotiation committee will attempt to negotiate a contract with the highest-ranked offeror to perform services at a compensation and terms which the committee determines to be fair and reasonable. If the committee is unable to negotiate a satisfactory contract with the offeror obtaining the highest ranking, negotiations with that offeror shall be formally terminated. The negotiation committee then shall undertake negotiations with the second-ranked offeror. If these negotiations also prove unsatisfactory, negotiations shall again be terminated and the committee will negotiate, in turn, with each offeror in accordance with their ranking by the committee, until an agreement is reached or the short list is exhausted. When a short list is exhausted, the committee shall select additional offerors with which to attempt to negotiate a contract, in the order of their competence and qualifications.
- 10.2.10 REIMBURSABLE ITEMS. Each selection and negotiation committee shall consider reimbursable items as necessary or desirable for each contract under consideration. If a contract is to contain reimbursable items, the contract shall have a limitation as to the types of reimbursables included and the monetary amount to be paid by the City.
- 10.2.11 AWARD OF CONTRACT. At the successful conclusion of negotiations, a contract award will be recommended to the City Council.



10.3 PROFESSIONAL SERVICES ABOVE MANDATORY BID AMOUNT

- 10.3.1 Professional Services at or above the mandatory bid amount and not required to be procured pursuant to the Consultant's Competitive Negotiations Act, shall be procured by requests for proposals in accordance with this Policy.
- 10.3.2 All general services at or above the mandatory bid amount whereby a price and other criteria may be quantitatively evaluated shall be acquired by invitations for bid or requests for proposals. A request for proposals should indicate the evaluation criteria and how the evaluation is to be made.

10.4 SMALL PURCHASES OF PROFESSIONAL SERVICES

The Procurement Manager is authorized to enter into multiple award, open-end, fixed, or any other types of contracts for professional services not covered by CCNA requirements below the mandatory bid amount, and CCNA Professional Services under Fifteen Thousand (\$15,000.00).

10.5 CONTRACT NEGOTIATIONS IN CASE OF EMERGENCIES

For projects identified and certified as valid public emergencies by the City Manager, subject to approval or ratification of the City Council, the Procurement Division using it's best efforts and judgment shall select the three (3) most qualified firms unless the emergency of the situation requires that one firm be engaged immediately, from the list maintained by the Procurement Division or obtained by other means. The Procurement Division shall select and negotiate with the most qualified firm considering the nature and extent of the emergency.

At the earliest practical time, the Procurement Division shall present to the City Council an agenda item ratifying the selection of the firm selected during the emergency and the reason why the normal selection procedure could not be followed.

10.6 TRUTH-IN-NEGOTIATIONS

For any lump-sum or cost-plus-a-fixed-fee professional service contract over \$150,000, the City Council shall require the firm receiving the award to execute a truth-in-negotiations certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete and current at the time of contracting. Any professional service contract under which such a certificate is required shall contain a provision that the original contract price and any additions thereto shall be adjusted to exclude any significant sums by which the City Council determines the contract price was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs. All such contract adjustments shall be made within one (1) year following the end of the contract.



10.7 PROHIBITION AGAINST CONTINGENT FEES

The City shall be responsible for assuring that all contracts for professional services contain the required “prohibition against contingent fees” as contained in Section 287.055, Florida Statutes of the CCNA.

10.8 SELECTION AND NEGOTIATION COMMITTEES

10.8.1 SELECTION AND NEGOTIATION COMMITTEE. The Selection and Negotiation Committee shall consist of a minimum of three (3) City employees, which shall be ad hoc for each instance and appointed by the City Manager or the Procurement Manager:

10.8.2 COMMITTEE CHAIR. The City Manager or Procurement Manager will appoint the Committee Chair.

10.8.3 COMMITTEE CONSULTANT. The Procurement Manager and City Attorney or their designees shall serve as staff to the Committee without any voting privileges or powers to evaluate any proposer.

10.8.4 ROLE OF THE PROCUREMENT MANAGER. In the absence of a committee meeting, the Procurement Manager or designee shall be the only form of contact with the offerors until a contract has been successfully negotiated and awarded.

The Procurement Manager or designee will be responsible for receiving all negotiation documentation and shall distribute to the committee.

Upon completion of the award of a contract and issuance of a purchase order and other contractual documents, the responsibility of the contract will transfer to the User Department or project manager. In the event of a problem with the contract or non-performance of the vendor, the Procurement Manager or designee will be responsible to ensure contract compliance or contract remedy.

10.8.5 MEETINGS. All meetings of the Selection and Negotiations Committees or any form of Evaluation shall comply with the Sunshine Law.

10.8.6 COMMUNICATION. All committee communication shall comply with the Sunshine Law.

10.8.7 PRESENTATIONS. All presentations shall comply with the Sunshine Law.

10.8.8 ETHICS. The committee members shall comply with the Code of Ethics for Public Officers and Employees.



- 10.8.9 RECOMMENDATION TO COUNCIL. At the meeting, after an agreement has been reached, the members of the committee present shall sign a recommendation form, which will indicate the fee schedule and/or contract price. The Procurement Division will assist and review and approve the agenda package for City Council. The agenda package shall include, but not be limited to, cover sheet, final agreement, which has been signed by the vendor and all attachments.



11. SMALL PURCHASES

11.1 SMALL PURCHASES

Any procurement of commodities, contractual and professional services or construction under Twenty-five Thousand Dollars (\$25,000.00), may be made in accordance with small purchase procedures promulgated by the Procurement Manager, provided, however, that procurement requirements shall not be artificially divided so as to constitute a small purchase under this Section.

11.2 COMPETITION FOR SMALL PURCHASES OF COMMODITIES OR SERVICES

Small purchases may be made in accordance with the procedures authorized in this Section; provided, however, that contracts for construction of municipal public works shall be made in accordance with applicable state laws including Chapter 180, Florida Statutes, as amended from time to time. Contracts shall not be artificially divided so as to constitute a small purchase under this Section.

The current known requirement of any commodity or service shall not be divided to circumvent the requirement of the Mandatory Bid Amount. However, there is no requirement to aggregate all predicted amounts of any commodity or service for formal bidding. The Procurement Manager may deem it more beneficial or economical to purchase an annual or alternate quantity of a commodity or service at one time or to enter into an open-end contract for annual or alternate requirements. In such cases, if the aggregate total exceeds the mandatory bid amount, formal bid procedures shall be used.

11.2.1 PROCEDURES. The Procurement Manager shall adopt, implement and enforce operational procedures for making small purchases under Twenty Five Thousand Dollars (\$25,000.00). Such operational procedures shall require the preparation and maintenance of written records adequate to document the competition obtained, properly account for the funds expended and facilitate an audit of the small purchase made. Such records shall include the names of persons from whom quotations are sought and obtained, dates of inquiry, nature and description of service for which inquiry is being made and amounts quoted, with exactly what will be provided for such amount.

11.2.2 DIRECT SOLICITATION. Small purchases of commodities and contractual and professional services when the estimated value is One Thousand Five Hundred Dollars (\$1,500.00) or less may be made upon receipt of one (1) telephone quotation.

11.2.3 INFORMAL QUOTATIONS. Small purchases of commodities and contractual and professional services when the estimated value is in excess of One Thousand Five Hundred Dollars (\$1,500.00) but not more than Fifteen



Thousand Dollars (\$15,000.00) may be made upon receipt of not less than three (3) telephone quotations. In order to determine a fair and reasonable price, additional quotations may be solicited.

- 11.2.4 **FORMAL QUOTATIONS.** Small purchases of commodities and contractual and professional services when the estimated value is in excess of Fifteen Thousand Dollars (\$15,000.00) but under Twenty Five Thousand Dollars (\$25,000.00), may be made after attempts have been made to solicit quotations from a minimum of three (3) different sources of supply by a formal written request for quotations. The Procurement Manager shall solicit quotes by direct mail or facsimile request to prospective vendors. Public notice posted on a bulletin board at City Hall will constitute advertisement for quotations. The names of the persons submitting quotations and the date and amount of each quotation shall be recorded and maintained as a public record. Formal quotations will be given a tracking number and date for responding.
- 11.2.5 **AWARD.** The Procurement Manager has the authority to approve all small purchases.

11.3 DELEGATION OF PURCHASING AUTHORITY

- 11.3.1 **DELEGATION.** The Procurement Manager may delegate the ability to procure goods in an amount under Nine Hundred and Ninety Dollars (\$999.00) to representatives of the various City Departments designated by the Department Directors (after attendance at a training seminar offered by the Procurement Division).
- 11.3.2 **RESTRICTIONS.** This authority may only be delegated to those who attend a training seminar and does not include the ability to procure items that may be procured under established City contracts. This delegated authority shall not be used to circumvent the dollar limits delegated or other purchasing regulations.
- 11.3.3 **MONITORING.** The Procurement Manager will be responsible to monitor the activities of those individuals to whom purchasing authority is delegated and to rescind such delegated authority if deemed necessary.
- 11.3.4 **DISCLAIMING RESPONSIBILITY FOR IMPROPER PURCHASING.** The City may disclaim responsibility and liability for any expenditure or agreement for expenditure arising from a procurement made in its name, or the name of any governmental body under its authority by an unauthorized person or any person acting outside this Policy or their authorization or delegation as provided for by this Policy.



12. VENDOR

12.1 VENDOR SELECTION

- 12.1.1 Vendors will be added to the Procurement Division's database upon completion of a Vendor Application form or as required by the Procurement Division.
- 12.1.2 A minimum of three (3) vendors will be solicited for all types of solicitations that exceed One Thousand Dollars (\$1,000.00), with the exception of Section 15 — Sole Source and Section 17.2 — Exempt Purchases.
- 12.1.3 Procurement may utilize the following resources for seeking competitive vendors/contractors:
 - 12.1.3.1 *Procurement's Database*
 - 12.1.3.2 *Internet*
 - 12.1.3.3 *Publications*
 - 12.1.3.4 *Procurement Solicitation and Database providers*

12.2 QUALIFYING CONTRACTORS

The City may make such investigations as it deems necessary to determine the ability of the contractor to perform the work, and the contractors shall furnish to the City all such information and data for this purpose as the City may request. The City reserves the right to reject any bid, at any time, if the evidence submitted by or investigation of such contractor fails to satisfy the City that such contractor is properly qualified to carry out the obligation of the Contract and to complete the work contemplated therein or has provided false or misleading information. Conditional bids will not be accepted.

The City reserves the right to reject the bid proposal of any bidder who has previously failed to perform properly, or to complete on time, contracts of similar nature; who is not in a position to perform the contract; or who has habitually and without just cause neglected the payment of bills or otherwise disregarded its obligations to subcontractors, material men or employees. Ability of a bidder to obtain a Performance Bond and/or Payment Bond shall not be regarded as the sole test of such bidder's competency or responsibility.

12.3 VENDOR DEBARMENT OR SUSPENSION

- 12.3.1 AUTHORITY TO DEBAR OR SUSPEND. After reasonable notice to the person or company involved and reasonable opportunity for that person or company to be heard, the Procurement Manager, after written request by the Department and consultation with the City Attorney, shall have the authority to debar or suspend a person or company for cause from consideration for



award of future contracts. The debarment shall be for a period commensurate with the seriousness of the cause(s), and shall continue for the entire time set by the Procurement Manager. The Procurement Manager shall also have the authority to suspend a person or company from consideration for award of contracts if there is probable cause for debarment. If suspension precedes a debarment, the suspension period shall be considered in determining the debarment period. The Procurement Manager may suspend a person or company for a period of not more than three (3) months. During the period of debarment or suspension, the person or company may not bid on any City contracts, regardless of dollar amount, nor be approved as a subcontractor on any City contract.

12.3.2 **CAUSE FOR DEBARMENT.** The causes for debarment include the following:

12.3.2.1 *Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such a contract or subcontract.*

12.3.2.2 *Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a contractor.*

12.3.2.3 *Conviction under state or Federal antitrust statutes arising out of the submission of bids or proposals.*

12.3.2.4 *Violation of contract provisions, as set forth below, of a character which is regarded by the Procurement Manager to be so serious as to justify debarment action:*

12.3.2.4.1 Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or

12.3.2.4.2 A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts of the City or other governmental entities; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment; or

12.3.2.4.3 Refutation of an offer by failure to provide bonds, insurance or other required certifications within a reasonable time period; or

12.3.2.4.4 Refusal to accept a purchase order, agreement, or



contract, or to perform thereon provided such order was issued timely and in conformance with the offer received; or

12.3.2.4.5 Presence of principles of corporate officers in the business of concern, who were principals within another business at the time when the other business was suspended or debarred within the last three (3) years under the provisions of this section; or

12.3.2.4.6 Violation of the ethical standards set forth in state law; or

12.3.2.4.7 Any other cause the Procurement Manager, in consultation with the City Attorney, determines to be so serious and compelling as to affect responsibility as a City vendor including debarment by another governmental entity for any cause listed in this Policy.

12.3.2.5 **Decision.** *The Procurement Manager shall issue a written decision to debar or suspend. The decision shall:*

12.3.2.5.1 State the reason for the action taken, and

12.3.2.5.2 Inform the de-barred person or company of its rights to Administrative Review.

12.3.2.6 **Notice of Decision.** *A copy of the decision for the debarment or suspension shall be mailed or otherwise furnished immediately to the de-barred person, the City Manager, the City Council, and any other party intervening.*

12.3.3 ADMINISTRATIVE REVIEW FOR DEBARMENT OF PERSONS OR COMPANY AND DETERMINATION OF THE PROCUREMENT MANAGER.

12.3.3.1 **Administrative Review Procedure.** *The procedure for any grievance or appeal required by this article shall be:*

12.3.3.1.1 The person or company shall file a written notice to the City Manager of the person or company's intention to overturn the Procurement Manager's determination. This must be completed within fourteen (14) calendar days of the issuance of the Notice of Decision. The City Manager, or his designee, shall act as the protest officer.

12.3.3.1.2 The written notice shall explain in detail to the City Manager the person or company's appeal and defense to the Notice of Decision. The City Manager shall hand down formal findings and conclusion for granting or denial of the appeal within ten (10) calendar days of the written notice to the Procurement Manager.

12.3.3.1.3 Within two (2) working days of the receipt of the written



formal findings of fact and conclusion for granting or denial of appeal, the City Manager shall cause notification to be issued to the person or company of their decision. Such notification shall be transmitted via either facsimile, or certified return receipt required mail.

12.3.3.2 ***Reinstatement.** A debarred person or company may only be reinstated upon submission of an application to the Procurement Manager. Each application for reinstatement, after the term of debarment has been complete, shall include the following information:*

12.3.3.2.1 The name, address and telephone number of the party making the request or the party's representative.

12.3.3.2.2 A statement of the financial responsibility of the company.

12.3.3.2.3 A statement of facts indicating how the circumstances, which led to the debarment, have been resolved.

12.3.3.2.4 A list of jobs completed during the two (2) years prior to the reinstatement application.

12.3.3.2.5 A list of all departments of the City for which the person has performed work.

12.3.3.3 ***Grounds.** Request for reinstatement during the period of debarment shall be made in writing based upon the following:*

12.3.3.3.1 Discovery of new and material evidence not previously available.

12.3.3.3.2 Dismissal of the indictment or reversal of the conviction.

12.3.3.3.3 Bona fide change in ownership or management sufficient to justify a finding of present responsibility.

12.3.3.4 ***Procedures.** The determination whether to reinstate shall be based on the written submission of evidence, without further intervention of the Protest Officer. Upon consideration of the written submission, the Procurement Manager shall make a determination whether or not reinstatement is warranted. If the Procurement Manager determines that the person should not be reinstated, the person or company may request intervention by the Protest Officer in accordance with Section 10.3.3 above.*



13. RESPONSIVE AND RESPONSIBLE BIDDERS AND OFFERORS

13.1 DUTY CONCERNING RESPONSIVENESS AND RESPONSIBILITY

Before recommending or awarding a contract, the Procurement Manager must be satisfied that the prospective vendor/contractor is responsive and responsible.

13.2 STANDARDS OF RESPONSIVENESS

13.2.1 STANDARDS. Factors to be considered in determining whether the standard for responsiveness has been met include, but are not limited to, whether a prospective bidder or offeror has:

13.2.1.1 *Submitted with their bid or proposal all items required to be included, as stated in the Invitation for Bid or Request for Proposal. These items include, but are not limited to: bid security, brochures, leaflets, and samples.*

13.2.1.2 *The bidder or offeror meets or exceeds the City's specifications or scope of services as specified.*

13.2.2 INFORMATION PERTAINING TO RESPONSIVENESS. The prospective contractor shall supply information requested by the Procurement Manager concerning the responsiveness of such contractor. If such contractor fails to supply the requested information, the Procurement Manager shall base the determination of responsiveness upon any available information or may find the prospective contractor non-responsive because of such failure.

13.3 STANDARDS OF RESPONSIBILITY

13.3.1 STANDARDS. Factors to be considered in determining whether the standard for responsibility has been met include, but are not limited to, whether a prospective bidder or offeror has:

13.3.1.1 *available the appropriate financial, material, equipment, facility, and personnel resources and expertise, or the ability to obtain them, necessary to meet all contractual requirements; and*

13.3.1.2 *a satisfactory record of performance; and*

13.3.1.3 *a satisfactory record of integrity; and*

13.3.1.4 *qualified legally to contract with the City; and*

13.3.1.5 *supplied all necessary information in connection with the inquiry concerning responsibility.*



- 13.3.2 INFORMATION PERTAINING TO RESPONSIBILITY. The prospective contractor shall supply information requested by the Procurement Manager concerning the responsibility of such contractor. If such contractor fails to supply the requested information, the Procurement Manager shall base the determination of responsibility upon any available information or may find the prospective contractor non-responsible because of such failure.

13.4 ABILITY TO MEET STANDARDS

The prospective contractor may demonstrate the availability of necessary financing, equipment, facilities, expertise, and personnel by submitting upon request:

- 13.4.1 acceptable evidence that such contractor possesses such necessary items;
or
- 13.4.2 acceptable plans to subcontract for such necessary items; or
- 13.4.3 an acceptable documented commitment from, or explicit arrangement with, a satisfactory source to provide the necessary items.

13.5 WRITTEN DETERMINATION OF NON-RESPONSIVENESS AND NONRESPONSIBILITY REQUIRED

If a bidder or offeror, who otherwise might have been awarded a contract is found to be non-responsive and/or non-responsible, a written determination of non-responsiveness and/or non-responsibility setting forth the basis of the finding shall be prepared by the Procurement Manager. The final determination shall be made part of the procurement file.



14. CANCELLATION OF SOLICITATIONS; REJECTION OF BIDS OR PROPOSALS

14.1 CANCELLATION OF INVITATIONS FOR BIDS OR REQUESTS FOR PROPOSALS

An invitation for bids, a request for proposals, or other solicitation may be canceled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation, when it is in the best interest of the City. The reasons therefor shall be made part of the contract file.

14.2 POLICY

Solicitations should only be issued when there is a valid procurement need unless the solicitation states that it is for informational purposes only.

Preparing and distributing a solicitation requires the expenditures of City time and funds. Bidders and offerors likewise incur expense in examining and responding to solicitations. The City reserves the right to cancel a solicitation when in the City's best interest.

14.3 NOTICE

Each invitation for bids and request for proposals issued by the City shall state that the solicitation may be canceled as provided for in this Policy.

14.4 PROCEDURE

14.4.1 "OPENING." As used in this Section "opening" means the date set for opening of bids, or receipt of proposals in competitive sealed proposals.

14.4.2 PRIOR TO OPENING. Prior to opening, a solicitation may be canceled in whole or in part when the Procurement Manager determines in writing that such action is in the City's best interest for reasons including but not limited to:

14.4.2.1 *the City no longer requires the commodities, services, or construction; or*

14.4.2.2 *the City no longer can reasonably expect to fund the procurement; or*

14.4.2.3 *proposed addenda to the solicitation would be of such magnitude that a new solicitation is desirable.*



- 14.4.3 **AFTER OPENING.** After opening, but prior to award, all bids or proposals may be rejected in whole or in part when the Procurement Manager determines in writing that such action is in the City's best interest for reasons including, but not limited to:
- 14.4.3.1 *the commodities, services, or construction being procured are no longer required; or*
 - 14.4.3.2 *ambiguous or otherwise inadequate specifications were part of the solicitation; or*
 - 14.4.3.3 *the solicitation did not provide for consideration of all factors of significance to the City; or*
 - 14.4.3.4 *prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds; or*
 - 14.4.3.5 *all otherwise acceptable bids or proposals received are at clearly unreasonable prices; or*
 - 14.4.3.6 *there is reason to believe that the bids or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith.*
- 14.4.4 **DOCUMENTATION.** The reasons for cancellation or rejection shall be made a part of the procurement file and shall be available for public inspection.
- 14.4.5 **NOTIFICATION.** When a solicitation is canceled before opening, notice of cancellation shall be sent to all vendors solicited. When all bids or proposals are rejected in whole or in part after opening, notice of rejection shall be sent to all bidders/offerors. The notice of cancellation or rejection shall:
- 14.4.5.1 *identify the solicitation; and*
 - 14.4.5.2 *briefly explain the reason for cancellation or rejection; and*
 - 14.4.5.3 *where appropriate, explain that an opportunity will be given to compete on any re-solicitation or any future procurement of similar commodities, services, or construction.*

14.5 REJECTION OF INDIVIDUAL BIDS OR PROPOSALS

- 14.5.1 **NOTICE IN SOLICITATION.** Each invitation for bids and request for proposals issued by the City shall provide that any bid or proposal may be rejected in whole or in part when in the best interest of the City as provided in this Section.
- 14.5.2 **REASONS FOR REJECTION.**



14.5.2.1 **Bids.** *Reasons for rejecting a bid include, but are not limited to:*

- 14.5.2.1.1 the bidder that submitted the bid is non-responsible; or
- 14.5.2.1.2 the bid is not responsive; or
- 14.5.2.1.3 the supply, service, or construction item offered in the bid is unacceptable by reason of its failure to meet the requirements of the specifications or permissible alternates or other acceptability criteria set forth in an invitation for bids.

14.5.2.2 **Proposals.** *Unless the solicitation states otherwise, proposals need not be unconditionally accepted without alteration or correction, and the City's stated requirements may be revised or clarified after proposals are submitted. This flexibility must be considered in determining whether reasons exist for rejecting all or any part of a proposal. Reasons for rejecting proposals include, but are not limited to:*

- 14.5.2.2.1 the offeror that submitted the proposal is non-responsible; or
- 14.5.2.2.2 the proposal ultimately (that is, after any opportunity has passed for altering or clarifying the proposal) fails to meet the announced requirements of the City in some material respect; or
- 14.5.2.2.3 the proposed price is clearly unreasonable.

14.5.3 **NOTICE OF REJECTION.** Upon request, rejected bidders or offerors shall be advised of the reasons thereof.

14.6 "ALL OR NONE" BIDS OR PROPOSALS

Only when specified by the solicitation may a bid or proposal limit acceptance to the entire bid or proposal offering. Otherwise, such bids or proposals shall be deemed to be non-responsive. If the bid or proposal is properly so limited, the City shall not reject part of such bid or proposal and award the remainder.

14.7 DISPOSITION OF BIDS OR PROPOSALS

When bids or proposals are rejected, or a solicitation canceled after bids or proposals are received, the bids or proposals which have been opened shall be retained in the procurement file, or, if unopened, returned to the bidders or offerors upon request and at their expense.



15. AWARD AUTHORITY

15.1 AUTHORITY LEVELS

- 15.1.1 AWARD AUTHORITY. The authority levels to award the procurement of goods and services will range from an Authorized Department Delegated Buyer, Procurement Manager, City Manager, and/or City Council authority to approve. In all instances any one of the authority levels may request higher authority to approve the purchase.
- 15.1.2 DEPARTMENT DELEGATED BUYER. The department-delegated buyer is authorized to award Field Purchase Orders for commodities and services off of City Property in an amount under seven hundred and fifty dollars (\$750.00). Due to the fact that there is no competition in procuring seminars, registrations, books, hotel registrations and other educational or association expenses, the department-delegated buyer is not limited on these purchases.
- 15.1.3 PROCUREMENT MANAGER. The Procurement Manager has the authority to approve all purchases as follows:
- 15.1.3.1 *Commodities and contractual or construction services up to and including Fifty Thousand Dollars (\$50,000.00);*
 - 15.1.3.2 *Sole source purchases (Section 15) up to and including Twenty Five Thousand Dollars (\$25,000.00);*
 - 15.1.3.3 *Emergency purchases (Section 16) up to and including Twenty Five Thousand Dollars (\$25,000.00);*
 - 15.1.3.4 *Professional and Consultant Services up to and including Twenty Five Thousand Dollars (\$25,000.00); and*
 - 15.1.3.5 *Exempt Purchases (Subsection 17.2) up to and including Twenty Five Thousand Dollars (\$25,000.00).*
 - 15.1.3.6 *Exceptions to the award authority are listed as sole City Council approval in Subsection 13.1.5 — City Council.*



- 15.1.4 CITY MANAGER. The City Manager has the authority to approve all purchases as follows:
- 15.1.4.1 *Commodities and contractual or construction services which are estimated to be up to and including Two Hundred and Fifty Thousand Dollars (\$250,000.00);*
 - 15.1.4.2 *Sole Source purchases (Section 15) up to and including Fifty Thousand (\$50,000.00);*
 - 15.1.4.3 *Emergency Procurements (Section 16) exceeding Twenty Five Thousand Dollars (\$25,000.00);*
 - 15.1.4.4 *Professional and Consultant Services up to and including Fifty Thousand Dollars (\$50,000.00); and*
 - 15.1.4.5 *Exempt purchases (Subsection 17.2) up to and including Fifty Thousand (\$50,000.00).*
 - 15.1.4.6 *Exceptions to the award authority are listed as sole City Council approval in Section 13.1.5 — City Council.*
- 15.1.5 CITY COUNCIL. The City Council shall approve the award of the following purchases:
- 15.1.5.1 *Commodities, equipment, construction and contractual services which are estimated to exceed Two Hundred and Fifty Thousand Dollars (\$250,000.00);*
 - 15.1.5.2 *Sole source purchases (Section 15) exceeding Fifty Thousand Dollars (\$50,000.00);*
 - 15.1.5.3 *Professional and Consultant Services exceeding Fifty Thousand Dollars (\$50,000.00);*
 - 15.1.5.4 *Exempt purchases (Subsection 17.2) exceeding Fifty Thousand Dollars (\$50,000.00); and*
 - 15.1.5.5 *All exceptions, which include: franchise and inter-local agreements, land and real estate purchases.*



16. BID PROTESTS

16.1 BID PROTEST POLICY

Any person whose bid or proposal is rejected, in whole or in part, or who submits a bid or proposal but is not awarded the contract may protest such decision, but only in strict compliance with this Section.

16.2 BID PROTEST PROCEDURE

16.2.1 WRITTEN NOTICE; TIME. Any person who wishes to file a bid protest hereunder must file a notice of intent to do so, in writing, with the City Manager within twenty-four (24) hours after receipt of the notice of rejection, for rejected bids or proposals, or, for contract awards, within twenty-four (24) hours after the City's declaration of its intention with regard to such award.

16.2.2 WRITTEN PROTEST; TIME; CONTENTS. Within ten (10) days after filing the written notice of intent to protest, a formal written protest must be filed with the City Manager, explaining in detail the nature of the protest and the grounds upon which it is based.

16.2.3 PROTEST BOND. Each written protest must be accompanied by a bid protest bond in the form of a certified check, cashier's check or money order made payable to the City of Punta Gorda, in an amount not less than five percent (5%) of the protester's bid, or (in the case of submission of a "no-bid" by the protestor) in the amount not less than five percent (5%) of the lowest responsible bid received by the City, or (in the case of a request for proposals) in the amount of not less than five percent (5%) of the contract awarded by the City for the accepted proposal.

16.2.4 FORFEIT OF BOND. The condition of the protest bond shall be that, should the protest be determined to be without merit and non-valid, the bond shall be forfeited to the City in its entirety.

16.3 BID PROTEST CONSIDERATION

16.3.1 PROTEST DECISION. Upon receipt of a formal written protest, the City Manager shall forward such written protest to the City Attorney, who shall act as the bid protest officer, and who shall be provided all applicable documents and files by the Procurement Manager. The City Attorney shall decide the protest, provided in writing, to the City Manager, with findings of fact and a conclusion as to the validity or non-validity of the protest, within fourteen (14) days after receipt by the City Attorney of the formal written protest.



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- 16.3.2 NOTICE OF DECISION. Within twenty-four (24) hours after receipt of the City Attorney's decision on a protest, the City Manager shall mail a copy thereof to the protestor.



17. SOLE SOURCE PROCUREMENT

17.1 SOLE SOURCE PROCUREMENT

A contract may be awarded for a supply, service, or construction item without competition when the Procurement Manager determines in writing that there is only one (1) source reasonably available for the required item or service. The Procurement Manager shall conduct negotiations as appropriate as to price, delivery and terms. A record of sole source procurement shall be maintained as a public record. All specifications shall be drafted so as to promote overall economy for the purposes intended, to encourage competition in satisfying the City's need, and shall not be unduly restrictive so as to limit availability to a single source.

All sole source procurements in which the cost of the commodities or contractual services exceeds Twenty Five Thousand Dollars (\$25,000.00), shall be authorized by the City Manager and reported to the City Council monthly. All sole source procurements where the cost of the commodities or contractual services exceeds Fifty Thousand Dollars (\$50,000.00), shall be approved by the City Council.

17.2 CONDITIONS FOR USE OF SOLE SOURCE PROCUREMENT

17.2.1 CONDITIONS. Sole source procurement is not permissible unless a requirement is available from only a sole source. A requirement for a particular proprietary item does not justify sole source procurement if there is more than one potential bidder or offeror for that item. The following are examples of circumstances which could necessitate sole source procurement:

17.2.1.1 *where the compatibility of equipment, accessories, or replacement parts is the paramount consideration;*

17.2.1.2 *where a sole supplier's item is needed for trial use or testing; or*

17.2.1.3 *Where a sole supplier's item is to be procured for resale.*

17.2.2 DETERMINATION. The determination as to whether a procurement shall be made as a sole source shall be made by the City Manager for procurements above the mandatory bid amount. Such determination and the basis therefor, shall be submitted in writing to the City Manager for approval or denial. Any request by a User Department that a procurement be restricted to one (1) potential contractor shall be accompanied by an explanation as to why no other will be suitable or acceptable to meet the need.



17.3 RECORD OF SOLE SOURCE PROCUREMENT

For the purpose of complying with this Section, a record of sole source procurement shall be maintained that lists each contractor's name; the amount and type of each contract; a listing of the commodities, services, or construction procured under each contract; and the identification number of each contract file/purchase order.



18. EMERGENCY PROCUREMENT

18.1 EMERGENCY PROCUREMENT

Notwithstanding any other provision of this Policy, the City Manager may make or authorize others to make emergency procurements when there exists a threat to public health, welfare, property, safety or other substantial loss to the City under emergency conditions. The Department Director requesting an emergency procurement shall prepare a written determination of the basis for the emergency and for the selection of the particular contractor, which shall be included in the contract file.

All emergency procurements where the cost of the commodities or contractual services exceeds Twenty Five Thousand Dollars (\$25,000.00), shall be authorized by the City Manager and reported to the City Council.

18.2 DEFINITION OF EMERGENCY CONDITIONS

An emergency condition is a situation which creates an impairment to public health, property, welfare, safety or other substantial loss as may arise by reason of floods, epidemics, riots, equipment failures, or such other reason as may be proclaimed by the City Manager. The existence of such condition creates an immediate and serious need for commodities, services, or construction that cannot be met through normal procurement methods and the lack of which would impair the functioning of City government, the preservation or protection of property, or the health or safety of any person, or would be detrimental to the best interest of the City.

18.3 SCOPE OF EMERGENCY PROCUREMENT

Emergency procurement shall be limited to those commodities, services, or construction items reasonably necessary to meet the emergency.

18.4 SOURCE SELECTION METHODS

18.4.1 GENERAL. The procedure used for any emergency purchase shall be selected to assure that the required commodities, services, or construction items are procured in time to meet the emergency. Given this constraint, such competition as is practicable shall be utilized.

18.4.2 AFTER UNSUCCESSFUL COMPETITIVE SEALED BIDS/ PROPOSALS. Competitive sealed bids/proposals are unsuccessful when bids/offers received pursuant to an invitation for bids or request for proposals are unreasonable, noncompetitive, or the low bid exceeds available funds, and



time or other circumstances will not permit the delay required to re-solicit competitive sealed bids/proposals. If emergency conditions exist after an unsuccessful attempt to use competitive sealed bids/proposals, an emergency procurement may be made.

18.5 DETERMINATION AND RECORD OF EMERGENCY PROCUREMENT

- 18.5.1 DETERMINATION. The Department Director of the User Department shall make a written determination stating the basis for an emergency procurement and for the recommended selection of the particular contractor. Such determination shall be sent promptly to the City Manager and the Procurement Manager.
- 18.5.2 RECORD. A record of each emergency procurement shall be made as soon as practicable and shall set forth the contractor's name; the amount and type of the contract; a listing of the commodities, services, or construction procured under the contract; and the identification number of the contract file/purchase order.



19. EXCEPTIONS/EXEMPTIONS

19.1 EXCEPTIONS

- 19.1.1 RESERVED FOR CITY COUNCIL. In addition to other authority specifically reserved to the City Council in this Policy, the authority for approving the following types of purchases and contracts shall remain vested in the City Council:
- 19.1.1.1 **Franchises.** *All franchise agreements shall be approved by the City Council.*
 - 19.1.1.2 **Inter-local Agreements.** *All inter-local agreements require the approval of the City Council.*
 - 19.1.1.3 **Land.** *All purchases of land require the approval of the City Council.*
 - 19.1.1.4 **Legal, Auditing, and Actuarial Services.** *All contracts for legal, auditing and actuarial services are exempt from any provisions of this Policy. Legal Services include services of expert witnesses, court reporters, appraisers and other services as determined by the City Attorney.*
 - 19.1.1.5 **Medical Director.** *Any contract with a medical doctor to serve as medical director for the City shall require City Council approval and is exempt from any provisions of this Policy.*

19.2 EXEMPTIONS

- 19.2.1 EXEMPTIONS. The Procurement Manager, City Manager and City Council shall have the authority to purchase the following types of commodities and services without regard to the provisions of this Policy, provided that reasonable efforts are made for competitive selection. The authority levels in Section 13 shall apply to these purchases.
- 19.2.1.1 *Services involving special skill, ability, training or expertise and which are, in their nature, unique, original or creative; and*



- 19.2.1.2 *The purchase of advertising, legal notice publication, utility services (including, but not limited to, electric, water, cable TV, and telephone services), dues and memberships in trade or professional organizations, subscriptions to periodicals and professional publications, reference books and materials, and similar products and services; and*
- 19.2.1.3 *Contracts for the provision of academic programs, reviews, lectures or seminars; and*
- 19.2.1.4 *Contracts for health services involving examination, diagnosis, treatment, prevention, medical consultation or administration; and*
- 19.2.1.5 *Contracts for performing arts, entertainers, and artistic services which are original and creative in character and skill; and*
- 19.2.1.6 *Contracts for maintenance service for equipment, when considered by the Procurement Manager to be in the best interest of the City and when recommended by the User Department, and when the services are to be performed by the equipment manufacturer, manufacturer's service representative, a distributor of the manufacturer's equipment, or when at least three (3) responsible providers of the service have been evaluated; and*
- 19.2.1.7 *Purchases from petty cash under policies adopted and implemented by the Procurement Manager.*
- 19.2.1.8 *Owner Direct Purchase Program may be utilized to purchase goods, materials and equipment the cost of which has been incorporated as a part of a competitively solicited project.*



20. CHANGE ORDERS TO CONTRACTS AND AGREEMENTS

20.1 CHANGE ORDER AUTHORITY

Authority levels have been assigned for change order dollar amounts and contract time extensions.

20.2 CITY REPRESENTATIVE OR CITY PROJECT MANAGER

The City representative or project manager has the authority to approve change order requests in an amount up to Seven Hundred Fifty Dollars (\$750.00) and may approve requests for contract time extensions not to exceed five (5) days. Minor non-monetary changes, which do not result in a change in the contract amount, may also be approved by the City representative or project manager.

20.3 PROCUREMENT MANAGER

The Procurement Manager may approve change orders in a singularly or cumulatively amount that does not exceed 10% of the total contract price with a maximum cap of Fifty Thousand Dollars (\$50,000.00) with the exception of contracts requiring City Council's approval for an award. The Procurement Manager may authorize contract time extension in excess of five (5) days and non-monetary change, which are not considered minor, which do not result in a change in the contract amount.

20.4 CITY MANAGER

The City Manager may approve all change orders with the exception of contracts that require the City Council's approval.

20.5 CITY COUNCIL

The City Council shall approve change orders for Exemption contract that are reserved for City Council Approval (i.e. Franchises, Inter-local Agreements, Land, Legal, Auditing, Actuarial Services and Medical Director).



21. RISK MANAGEMENT IN PROCUREMENT

21.1 INDEMNIFICATION

All contracts for services shall require that the contractor defend, indemnify and hold the City, the City's representative or agent, and the officers, directors, agents, employees, and assigns of each harmless from and against any and all claims, demands, suits, judgements, damages to persons or property, injuries, losses, or expenses of any nature whatsoever (including attorneys' fees at trial at appellate level) arising directly or indirectly from or out of any negligent act or omission of the elected firm, its subconsultants and their officers, directors, agents or employees; any failure of the elected firm to perform its services hereunder in accordance with generally accepted professional standards; any material breach of the elected firm's representations as set forth in the proposal or any other failure of the elected firm to comply with the obligations on its part to be performed under this contract.

21.2 INSURANCE REQUIREMENTS

- 21.2.1 The City's Risk Manager, or their designee, will review, as requested, special conditions and instructions to bidders for the solicitation of bids or quotations for commodities, services or construction, for insurance requirements when the provision of insurance is specified in this Policy or otherwise determined to be in the best interest of the City.
- 21.2.2 Prior to awarding of a bid or quotation, the Risk Manager will review insurance certifications, and shall provide written approval or rejection of the proof of insurance submitted by the contractors. The Procurement Division shall not allow any contractor to continue under a City contract without proper insurance in effect after the City has been notified of the lapse of the requisite insurance.



22. SUPPLY MANAGEMENT

22.1 DISPOSAL OF OBSOLETE AND SURPLUS PROPERTY

The Procurement Division shall have the power to sell or dispose of obsolete and surplus property by public auction, competitive sealed bidding, trade-in, or other appropriate methods in conformance with any applicable state law. No employee of the department having direct control of the commodities or handling the disposition of the commodities shall be entitled to purchase any such commodities. No other City employee shall be allowed to purchase obsolete or surplus property except through a competitive bid process or a public auction.

22.2 ADOPTION OF REGULATIONS

All formal quotations or sealed bids for the sale of surplus property shall be processed under regulations adopted by the Procurement Manager in accordance with the intent and purpose of this Policy. The Procurement Manager shall also promulgate regulations and procedures for the use of other types of disposal methods.



23. LOCAL VENDOR PREFERENCE – INVITATION TO BID

23.1 ESTABLISHED

- 23.1.1 The city reserves the right to compare, contrast and otherwise evaluate the quality of materials, qualifications, character, responsibility and fitness of all persons, firms, partnerships, companies or corporations submitting a response to a sealed invitation to bid for the procurement for construction, commodities and/or services when making an award in the best interest of the city.
- 23.1.2 Whenever two or more bids are equal with respect to price, quality, and service are received by the City by a local and non-local vendor the bid shall be awarded to the local vendor only if the local vendor is deemed a qualified local vendor.
- 23.1.3 When a responsive, responsible non-local vendor submits the lowest price bid, and the bid submitted by one or more qualified local vendors is within five (5) percent of the price submitted by the non-local vendor, then each of the aforementioned qualified local vendors shall have the opportunity to submit a best and final bid equal to or lower than the amount of the low bid previously submitted by the non-local vendor. Application of Local Vendor Preference shall be as follows:
- 23.1.3.1 *Procurement shall determine if the local vendors are in fact qualified and responsive bidders.*
- 23.1.3.2 *The Procurement Manager shall invite the qualified local vendors to submit a best and final bid within five (5) City business days of being notified by the Procurement Manager in writing.*
- 23.1.3.3 *If the lowest qualified local vendor(s) submits a best and final bid that fully matches and is not lower than the lowest bid from the lowest non-local bidder originally submitted, then award shall be made to the lowest, qualified local vendor whose business is closest in driving proximity to the delivery or project site.*
- 23.1.3.4 *If the qualified local vendor(s) declines or is unable to match the lowest, responsive, responsible non-local vendor bid price(s), then award will be made to the lowest overall, responsive, responsible bidder.*



- 23.1.3.5 *In the case of a tie in the best and final bid between more than one (1) qualified local vendors, contract award shall be made to the qualified local vendor within the closest driving proximity of the delivery or project site.*
- 23.1.4 The City Council reserves the exclusive right to exercise the option to not apply the local vendor preference to a specific procurement activity, which is not an exception to this Policy.
- 23.1.5 Persons, firms, partnerships, companies or corporations who desire to be considered for the local vendor preference must complete an affidavit provided in the solicitation package and return it with their bid submittal package. Upon verification by the city that the affidavit is sufficient and meets the local vendor criteria, the person, firm, partnership, company or corporation will then be considered a local vendor. Only persons, firms, partnerships, companies or corporations that provide the affidavit with their solicitation will be allowed to receive a local vendor preference. Vendors shall not have the opportunity to change the application or affidavit once submitted to the city and shall have the burden of demonstrating that it meets the definition.

23.2 EXCEPTIONS

- 23.2.1 The local vendor preference as provided in this section shall not apply to the following contracts or purchases:
- 23.2.1.1 *Professional services which are subject to the State of Florida Consultants Competitive Negotiations Act (F.S. § 287.055).*
- 23.2.1.2 *Purchases or contracts for which external funding is received and local vendor preference is prohibited pursuant to any laws, rules, regulations or policies.*
- 23.2.1.3 *Purchases made utilizing cooperative purchasing agreements with other governmental entities.*
- 23.2.1.4 *Purchases made utilizing inter-local agreements with other governmental entities.*
- 23.2.1.5 *Purchases made through the piggyback of state contract, national contract, or other governmental agency contracts.*
- 23.2.1.6 *Purchases made under a City Council Declaration of Emergency.*
- 23.2.1.7 *Purchases made under emergency procedure situations as set*



forth in the Procurement Policy.

- 23.2.1.8 *Purchases made for items that have been deemed as a sole/single source and/or standard items utilized by the city as set forth in the Procurement Policy.*
- 23.2.1.9 *Owner direct purchase orders issued for sales tax savings.*
- 23.2.1.10 *Products or services related to information technology or equipment, which is necessary:*
 - 23.2.1.10.1 *to maintain existing warranties; or*
 - 23.2.1.10.2 *to maintain compatibility with existing City systems.*
- 23.2.1.11 *Additional work on a completed construction project whereby warranties may be voided if original contractor does not perform modifications, maintenance or repairs. Applicability of this clause shall be at the sole discretion of the Procurement Manager.*

23.3 CONSIDERATION FOR AWARD.

- 23.3.1 Awards of contracts and/or purchases shall be to the lowest qualified local vendor that fully matches or is lower than the lowest non-local vendor. If the qualified local vendor declines or is unable to match the lowest non-local vendor the award will be made to the lowest, responsive and responsible vendor.
- 23.3.2 23.3.2 In determining the award of a contract, which will best serve the interest of the City, the City Council, City Manager, and Procurement Division, it shall not be limited to consideration of price, but will also consider the following:
 - 23.3.2.1 *The ability, capacity and skill of the vendor to perform under the terms of the solicitation package and/or provide the commodities and services required, including past performance, quality of performance and previous and/or existing compliance by the vendor in regards to federal, state, county and city laws, policies, ordinances, rules and regulations.*
 - 23.3.2.2 *Whether the vendor can perform the contract or provide the materials or service promptly or within the time specified, without delay or interference.*



- 23.3.2.3 *The character, integrity, reputation, judgment, experience, and efficiency of the vendor as reflected in credit reports, better business reports or other records or reports, including sufficiency of the financial resources.*
- 23.3.2.4 *The quality, availability, and adaptability of commodities, equipment, or contractual service to the particular use required.*
- 23.3.2.5 *The ability of the bidder and location of the business to provide future maintenance and service for the purchase of the equipment or material, and financial impact upon the city to receive future maintenance or service.*
- 23.3.2.6 *Whether the vendor is in arrears to the city on a debt or is a debtor or is a defaulter or surety to the city, or whether the vendor has delinquent taxes or assessments.*

23.4 REMEDIES AND APPEALS.

The local vendor designation shall not be considered as a basis for any formal protests of contract awards under the formal procurement process of the city. If a local vendor designation is denied by the city, the applicant may then appeal such decision to the purchasing manager for review and further consideration, and if denied by the purchasing manager, the applicant may appeal such decision to the City Council, who shall hear such appeal at a regular public meeting, and whose decision shall be final. The appeal process shall in no way delay the award of a contract or receipt of materials and/or services.

A contract recommendation or award to a qualified local vendor shall not be considered as a basis for any Formal Protests of contract awards under the City's Protest Policy.

23.5 PURVIEW AND ADMINISTRATION OF THIS POLICY.

The Procurement Division shall be responsible for developing, implementing and maintaining administrative procedures in support of this Policy.

This local preference section is being added to the Procurement Policy in support of the local economy during difficult economic times in Charlotte County. On or about one year of the effective date and annually thereafter, the Procurement Division will provide the City Council with an update of the results and impacts to date of this Local Preference Policy. The City Council shall decide to continue or cancel the Local Vendor Preference on an annual basis.